
STATUTORY INSTRUMENTS

1996 No. 2991

INCOME TAX

The Insurance Companies (Reserves) (Tax) Regulations 1996

Made - - - - 27th November 1996
Laid before the House of
Commons - - - - 28th November 1996
Coming into force - - - 23rd December 1996

The Treasury, in exercise of the powers conferred on them by sections 444BA(10), 444BB(1), (3), (4) and (5), 444BC and 444BD(1), (4) and (5) of the Income and Corporation Taxes Act 1988(1), hereby make the following Regulations:

PART I
GENERAL

Citation, commencement and effect

1. These Regulations may be cited as the Insurance Companies (Reserves) (Tax) Regulations 1996, shall come into force on 23rd December 1996, and shall have effect for accounting periods of insurance companies ending on or after that day.

Interpretation

2.—(1) In these Regulations unless the context otherwise requires—

“the Board” means the Commissioners of Inland Revenue;

“branch” includes agency;

“credit insurance business” has the meaning given by subsection (7) of section 444BD;

“credit insurance equalisation reserve” means a reserve which is an equivalent reserve for the purposes of section 444BD by virtue of subsection (3) of that section;

“double taxation relief” has the meaning given by subsection (6) of section 444BB;

- “EC company” has the same meaning as in the 1982 Act(2);
- “equivalent reserve” shall be construed in accordance with section 444BD;
- “the Management Act” means the Taxes Management Act 1970(3);
- “paragraph 52 method of accounting on a non-annual basis” means the method of accounting on a non-annual basis described in paragraph 52 of Schedule 9A to the Companies Act 1985(4);
- “return period” means the period covered in a document prepared by an insurance company for the purposes of section 17 of the 1982 Act;
- “section 34A regulations” means regulations made under section 34A of the 1982 Act(5);
- “section 444BA”, “section 444BB”, “section 444BC” and “section 444BD” mean sections 444BA, 444BB, 444BC and 444BD respectively of the Taxes Act(6);
- “the Taxes Act” means the Income and Corporation Taxes Act 1988(7);
- “the 1982 Act” means the Insurance Companies Act 1982(8).

- (2) In these Regulations “statutory accounts”, in relation to a company, means—
- (a) the annual accounts of the company prepared in accordance with Part VII of the Companies Act 1985, or
 - (b) if the company is not required to prepare such accounts, the accounts which it is required to keep under the law of its home state or, if it is not so required to keep accounts, such of its accounts as most closely correspond to accounts which it would have been required to prepare if the provisions of that Part applied to the company.
- (3) For the purposes of these Regulations a return period and an accounting period are related if any day falls within both the return period and the accounting period.

Differing treatments of reserves

- 3.—(1) This regulation applies in any case where for any accounting period—
- (a) an insurance company maintains any reserve to which these Regulations apply, and
 - (b) the amount of that reserve for the purposes of the Tax Acts is different from the amount of that reserve as maintained for regulatory purposes.
- (2) A separate computation of the amount of the reserve for the purposes of the Tax Acts and of the amount of the reserve as maintained for regulatory purposes shall be made for each accounting period until, in any later accounting period, the two computations produce the same opening balance for the reserve.
- (3) For the purposes of this regulation a reserve is maintained by a company for regulatory purposes if it is maintained—
- (a) by virtue of section 34A regulations, or
 - (b) for the purposes of the company’s statutory accounts, or

(2) The definition of “EC company” was inserted as section 2(6) of the Insurance Companies Act 1982 (c. 50) by regulation 4(2) of S.I. 1994/1696, and that definition was supplemented by section 2(7) of that Act inserted by regulation 3(1) of S.I. 1994/3132. Section 2(7) was amended by regulation 3 of S.I. 1996/944.

(3) 1970 c. 9.

(4) 1985 c. 6; Parts I and II of Schedule 9 were formed into a new Schedule numbered 9A by regulation 5(1) of S.I. 1991/2705, and Schedule 9A was substituted by Schedule 1 to S.I. 1993/3246.

(5) Section 34A was inserted by section 1(1) of the Insurance Companies (Reserves) Act 1995 (c. 29). The Insurance Companies (Reserves) Regulations (S.I. 1996/ 946) come into force on the same day as these Regulations.

(6) Sections 444BA to 444BD were inserted by paragraph 1 of Schedule 32 to the Finance Act 1996 (c. 8).

(7) 1988 c. 1.

(8) 1982 c. 50.

- (c) for the purposes of any credit insurance business in accordance with requirements specified in subsection (3) of section 444BD.

PART II

EQUALISATION RESERVES, ETC.

Overall Scope

Scope of this Part

- 4.—(1) Subject to paragraph (2), this Part of these Regulations applies to—
- (a) any equalisation reserve which an insurance company is required to maintain by virtue of section 34A regulations, and
 - (b) any reserve which is an equivalent reserve by virtue of subsection (2) of section 444BD.
- (2) This part of these Regulations does not apply to any credit insurance equalisation reserve.

Accounting on a non-annual basis

Non-annual accounts: tax returns prepared on an annual basis

- 5.—(1) This regulation applies in any case where an insurance company—
- (a) for the purpose of preparing the documents it is required to prepare for the purposes of section 17 of the 1982 Act, has applied a paragraph 52 method of accounting on a non-annual basis for any return period in respect of the whole or any part of its business, and
 - (b) for a related accounting period has submitted to an officer of the Board a return under section 11 of the Management Act⁽⁹⁾ which is based on accounts prepared on an annual basis in respect of the whole of its business for that accounting period.
- (2) The operation of paragraphs (a) and (b) of subsection (2) of section 444BA shall be modified so as to provide that, for the purposes of the Tax Acts, the amounts which, in accordance with section 34A regulations, are transferred into or out of the equalisation reserve in respect of the company's business for the accounting period in question shall be the amounts which would have been transferred into or out of the equalisation reserve if the company had been required, by virtue of section 34A regulations, to maintain an equalisation reserve by reference to accounts prepared on an accident year basis.
- (3) For the purposes of paragraph (1) (b) accounts are prepared on an annual basis where they are prepared otherwise than in accordance with a paragraph 52 method of accounting on a non-annual basis.
- (4) For the purposes of paragraph (2) accounts are prepared on an accident year basis where the accounts and statements required to be deposited with the Secretary of State pursuant to section 22 of the 1982 Act are prepared using Forms 21, 22 and 23 prescribed by the Insurance Companies (Accounts and Statements) Regulations 1996⁽¹⁰⁾.

⁽⁹⁾ Section 11 was amended by section 82 of the Finance (No. 2) Act 1987 (c. 51) and section 91 of, and Part V of Schedule 19 to, the Finance Act 1990 (c. 29) and, prospectively, by section 181 of, and Part V(23) of Schedule 26 to, the Finance Act 1994 (c. 9).

⁽¹⁰⁾ S.I. 1996/943.

General provisions

Companies carrying on mutual business and business other than mutual business

6.—(1) This regulation applies in any case where an insurance company which, in accordance with section 34A regulations, is required to make transfers into or out of an equalisation reserve in respect of any business carried on by that company for any accounting period, is carrying on both mutual business and business other than mutual business for the whole or any part of that period.

(2) Paragraphs (a) and (b) of subsection (2) of section 444BA shall be modified so as to provide that, for the purposes of corporation tax, the amounts of the net premiums earned, the net premiums written and the net claims incurred which, in accordance with section 34A regulations, are used for the purpose of computing the amounts transferred into or out of the equalisation reserve or the amount of the maximum reserve in relation to the equalisation reserve for the accounting period in question, shall be restricted to the amounts attributed to business other than mutual business.

(3) For the purposes of corporation tax, the modification specified in paragraph (2) shall be made before subsections (4) to (6) of section 444BA are applied.

(4) In paragraph (2) “net premiums earned”, “net premiums written”, “net claims incurred” and “maximum reserve” have the meanings given by section 34A regulations.

EC companies

7.—(1) This regulation applies in any case where for any accounting period—

- (a) an equivalent reserve is maintained, otherwise than by virtue of section 34A regulations, by an EC company carrying on business in the United Kingdom through a branch, and
- (b) the three conditions specified in paragraphs (2) to (4) are satisfied.

(2) The first condition is that the branch in the United Kingdom has submitted, together with its return under section 11 of the Management Act, a balance sheet (“the branch balance sheet”) in respect of the trade of the branch.

(3) The second condition is that the branch balance sheet includes as a liability an amount in respect of an equalisation reserve which is equal to the amount which it would have been required to include as a liability in respect of an equalisation reserve maintained by virtue of section 34A regulations if the branch had been subject to such regulations.

(4) The third condition is that a balance sheet drawn up on the same day as the branch balance sheet for the purposes of the company’s statutory accounts (“the company balance sheet”), either—

- (a) includes as a liability an amount in respect of an equalisation reserve equal to or greater than the amount in respect of the equalisation reserve included in the branch balance sheet, or
- (b) in a case where the amount in respect of the equalisation reserve included in the branch balance sheet exceeds the amount in respect of the equalisation reserve included in the company balance sheet, shows the amount of the excess in the company balance sheet otherwise than as funds belonging to, or available for distribution either immediately or prospectively to, the proprietors of the company.

(5) For the purpose of calculating the amount of the excess referred to in paragraph (4), any amount in the company balance sheet denominated in a currency other than sterling is to be translated into sterling at the London closing exchange rate on the last day of the accounting period in question.

(6) Section 444BA shall have effect, subject to the modification specified in paragraph (7), in relation to the equalisation reserve included in the branch balance sheet as it has effect in relation to equalisation reserves maintained by virtue of section 34A regulations.

(7) Section 444BA shall be modified so as to provide in addition that in any case where, after the conditions specified in paragraphs (2) to (4) have been satisfied in an earlier accounting period, any of those conditions ceases to be satisfied in a later accounting period, then, for the purposes of the Tax Acts—

- (a) any balance which exists in the reserve at the end of the later accounting period shall be deemed to have been transferred out of the reserve immediately before the end of that accounting period;
- (b) that transfer shall be deemed to be a transfer in respect of that company's business for that accounting period; and
- (c) the amount of the reserve shall thereupon be deemed to be nil.

Certain insurance business carried on outside the United Kingdom

8.—(1) This regulation applies in any case where for any accounting period—

- (a) an equivalent reserve is maintained, otherwise than by virtue of section 34A regulations, in respect of any insurance business (within the meaning of the 1982 Act) which is carried on outside the United Kingdom by a company resident in the United Kingdom, and
- (b) the condition specified in paragraph (2) is satisfied.

(2) The condition is that the company prepares statutory accounts in which the balance sheet includes as a liability an amount in respect of an equalisation reserve which is equal to the amount which it would have been required to include as a liability in respect of an equalisation reserve maintained by virtue of section 34A regulations if the company had been subject to such regulations.

(3) For the purpose of calculating the amount of the liability referred to in paragraph (2), any amount in the company balance sheet denominated in a currency other than sterling is to be translated into sterling at the London closing exchange rate on the last day of the accounting period in question.

(4) Section 444BA shall have effect, subject to the modification specified in paragraph (5), in relation to the equalisation reserve included in the statutory accounts as it has effect in relation to equalisation reserves maintained by virtue of section 34A regulations.

(5) Section 444BA shall be modified so as to provide in addition that in any case where, after the condition specified in paragraph (2) has been satisfied in an earlier accounting period, that condition ceases to be satisfied in a later accounting period, then, for the purposes of the Tax Acts—

- (a) any balance which exists in the reserve at the end of the later accounting period shall be deemed to have been transferred out of the reserve immediately before the end of that accounting period;
- (b) that transfer shall be deemed to be a transfer in respect of that company's business for that accounting period; and
- (c) the amount of the reserve shall thereupon be deemed to be nil.

United Kingdom branches of companies not resident in the United Kingdom which maintain equalisation reserves by virtue of section 34A regulations

9.—(1) If the three conditions prescribed in paragraphs (2) to (4) below are satisfied, section 444BA shall have effect in the case of an equalisation reserve maintained by an insurance company which—

- (a) is not resident in the United Kingdom, and
- (b) carries on business in the United Kingdom through a branch.

(2) The first condition is that the branch in the United Kingdom has submitted, together with its return under section 11 of the Management Act, a balance sheet (“the branch balance sheet”) in respect of the trade of the branch.

(3) The second condition is that the branch balance sheet includes as a liability an amount in respect of an equalisation reserve maintained by virtue of section 34A regulations.

(4) The third condition is that a balance sheet drawn up on the same day as the branch balance sheet for the purposes of the company’s statutory accounts (“the company balance sheet”, either—

- (a) includes as a liability an amount in respect of an equalisation reserve equal to or greater than the amount in respect of the equalisation reserve included in the branch balance sheet, or
- (b) in a case where the amount in respect of the equalisation reserve included in the branch balance sheet exceeds the amount in respect of the equalisation reserve included in the company balance sheet, shows the amount of the excess in the company balance sheet otherwise than as funds belonging to, or available for distribution either immediately or prospectively to, the proprietors of the company.

(5) For the purpose of calculating the amount of the excess referred to in paragraph (4), any amount in the company balance sheet denominated in a currency other than sterling is to be translated into sterling at the London closing exchange rate on the last day of the accounting period in question.

(6) Where, after the conditions prescribed in paragraphs (2) to (4) have been satisfied in an earlier accounting period, any of those conditions ceases to be satisfied in a later accounting period, then, for the purposes of the Tax Acts—

- (a) any balance which exists in the reserve at the end of the later accounting period shall be deemed to have been transferred out of the reserve immediately before the end of that accounting period;
- (b) that transfer shall be deemed to be a transfer in respect of that company’s business for that accounting period; and
- (c) the amount of the reserve shall thereupon be deemed to be nil.

Double taxation relief

10.—(1) This regulation applies in any case where an insurance company which, in accordance with section 34A regulations, is required to make transfers into or out of an equalisation reserve in respect of any business carried on by that company for any accounting period, is carrying on any business by reference to which double taxation relief is afforded in respect of any income or gains.

(2) Paragraphs (a) and (b) of subsection (2) of section 444BA shall be modified so as—

- (a) to require that the amounts which, in accordance with section 34A regulations, are transferred into or out of the equalisation reserve in respect of the company’s business for the accounting period in question shall be apportioned amongst each branch outside the United Kingdom through which the company carries on business and business which is not carried on through branches outside the United Kingdom; and
- (b) to provide that only those amounts which, pursuant to sub-paragraph (a), are apportioned to each branch outside the United Kingdom through which the company carries on business shall be brought into account for the purposes of computing the profits or losses by reference to which double taxation relief is afforded.

(3) The apportionment of each transfer into the equalisation reserve which is required by this regulation shall be made in accordance with the formula—

$$\frac{A \times B}{C}$$

A is the amount which, in accordance with section 34A regulations, is transferred into the equalisation reserve in respect of the company's business for the accounting period in question;

B is the amount of net premiums written by reference to which A is calculated that is attributable to business carried on through the branch outside the United Kingdom for the accounting period in question; and

C is the amount of net premiums written by reference to which A is calculated for the accounting period in question.

(4) In paragraph (3) "net premiums written" means gross premiums written net of reinsurance premiums payable under reinsurance ceded.

(5) The apportionment of each transfer out of the equalisation reserve which is required by this regulation shall be made in accordance with the formula—

$$\frac{D \times E}{F}$$

D is the amount which, in accordance with section 34A regulations, is transferred out of the equalisation reserve in respect of the company's business for the accounting period in question;

E is the amount of claims attributable to business carried on through the branch outside the United Kingdom that is to be taken into account in determining whether, by comparison with premiums, any transfer out of the equalisation reserve needs to be made for the period in question; and

F is the amount of claims to be taken into account in determining whether, by comparison with premiums, any transfer out of the equalisation reserve needs to be made for the period in question.

(6) Paragraph (7) applies where—

- (a) an insurance company carries on business through one or more branches outside the United Kingdom,
- (b) an amount is transferred into an equalisation reserve in respect of the business of that company for any accounting period, and
- (c) the company has made an election for the purposes of subsection (4) of section 444BA so that there is an unrelieved transfer in relation to that accounting period.

(7) The company—

- (a) shall apportion the amount transferred into the equalisation reserve in accordance with paragraph (3) without having regard to the existence of the unrelieved transfer, and
- (b) may then set the amount of the unrelieved transfer, or any part of that amount, against the amount transferred into the equalisation reserve for that accounting period (and the action of the company under this sub-paragraph is called "the allocation" in paragraph (8)).

(8) The allocation may be made—

- (a) in such amounts, and
- (b) in relation to such of the apportioned amounts transferred into the equalisation reserve pursuant to paragraph (7) (a) (and whether in relation to business carried on in the United Kingdom or in relation to business which the company carries on through a branch outside the United Kingdom),

as the company thinks fit.

(9) Paragraph (10) applies where—

- (a) an insurance company carries on business through one or more branches outside the United Kingdom,

- (b) an amount is transferred out of an equalisation reserve in respect of the business of that company for any accounting period, and
 - (c) the accounting period is one to which any amount representing one or more unrelieved transfers has been carried forward under subsection (4) of section 444BA.
- (10) The company—
- (a) shall ascertain the amount to which the rule mentioned in subsection (2) (b) of section 444BA applies by virtue of the operation of subsection (5) of that section (in this paragraph and in paragraph (11) referred to as “the ascertained amount”), and
 - (b) shall then apportion the ascertained amount.
- (11) Paragraph (5) shall apply for the purposes of the apportionment of the ascertained amount as it applies for the purposes of the apportionment of each transfer out of the equalisation reserve which is required by this regulation, with the modification that in the formula set out in that paragraph D shall be the ascertained amount.
- (12) In paragraphs (6), (7) and (9) “unrelieved transfer” shall be construed in accordance with subsection (4) of section 444BA.

PART III

RESERVES MAINTAINED FOR THE PURPOSES OF CREDIT INSURANCE BUSINESS

Scope of this Part

- 11.** This Part of these Regulations applies to any credit insurance equalisation reserve.

Application of section 444BA

12. Where for any accounting period an insurance company maintains a credit insurance equalisation reserve, section 444BA shall have effect in relation to that reserve as it has effect in relation to equalisation reserves maintained by virtue of section 34A regulations.

Transitional provision

13.—(1) This regulation applies in any case where an insurance company was required, pursuant to regulations 76 to 78 of, and Schedule 14 to, the Insurance Companies Regulations 1994(**11**), to maintain a credit insurance equalisation reserve.

(2) Paragraph 2(2) of Schedule 2 to the Insurance Companies (Reserves) Regulations 1996(**12**) shall be disregarded for the purposes of the Tax Acts in determining how much is required, on any occasion, to be transferred into the credit insurance equalisation reserve.

Application of provisions contained in Part II of these Regulations

14. Subject to regulation 13, regulations 5, 6, 9 and 10 shall have effect in relation to any credit insurance equalisation reserve as they have effect in relation to any reserve to which Part II of these Regulations applies.

(11) S.I. 1994/1516, to which there are amendments not relevant to these Regulations.

(12) S.I. 1996/946, which come into force on the same day as these Regulations.

27th November 1996

Bowen Wells
Roger Knapman
Two of the Lords Commissioners of Her
Majesty's Treasury

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under provisions contained in sections 444BA to 444BD of the Income and Corporation Taxes Act 1988 (“the Taxes Act”). (Sections 444BA to 444BD were inserted by paragraph 1 of Schedule 32 to the Finance Act 1996.) After dealing, in Part I, with certain general matters, the Regulations make provision, in Parts II and III, for the taxation of two different types of equalisation reserve which are required to be maintained by insurance companies.

Part I of the Regulations is of general application. Regulation 1 makes provision for citation, commencement and effect, and regulation 2 for interpretation. Regulation 3 provides that where the amount of an equalisation reserve for the purposes of the Tax Acts differs from the amount of that reserve for regulatory purposes (as defined) then two separate computations shall be made until the two computations produce the same opening balance for an accounting period.

Part II of the Regulations contains provisions relating to an equalisation reserve which an insurance company is required to maintain, by virtue of regulations made under section 34A of the Insurance Companies Act 1982 (“the 1982 Act”), in respect of certain types of general business. (Section 34A was inserted by section 1(1) of the Insurance Companies (Reserves) Act 1995 (c. 29).) This Part of these Regulations also applies to a reserve which is an equivalent reserve by virtue of section 444BD(2) of the Taxes Act.

Regulation 4 sets out the scope of this Part of these Regulations.

Regulation 5 applies where an insurance company has prepared accounts on a non-annual basis, and has submitted a return, based on accounts prepared on an annual basis, to an officer of the Board. The regulation provides for the amounts shown in the accounts prepared on a non-annual basis to be adjusted for the purposes of computations under the Taxes Acts.

Regulation 6 applies in the case of an insurance company which carries on both mutual business and business which is not mutual business, and confines the operation of section 444BA to business which is not mutual business.

Regulation 7 applies to a company which is an EC company within the meaning of the 1982 Act, regulation 8 to a company which is resident in the United Kingdom but which carries on insurance business only outside the United Kingdom, and regulation 9 to a company which is not resident in the United Kingdom but which carries on business in the United Kingdom through a branch or agency and which maintains an equalisation reserve by virtue of section 34A regulations. These regulations make provision for section 444BA to apply to such a company if conditions relating to the keeping of suitable accounts and the provision of information to the Inland Revenue are satisfied, and also provide for any balance in the equalisation reserve to be brought into charge for the purposes of the Tax Acts if those conditions cease to be satisfied.

Regulation 10 applies where an insurance company is carrying on business by reference to which double taxation relief is afforded in respect of any income or gains, and provides that only the amounts apportioned to business carried on through branches outside the United Kingdom shall be brought into account for the purposes of computing the profits or losses by reference to which double taxation relief is afforded. The regulation also makes provision for the computations to be made in cases where subsections (4) to (6) of section 444BA apply.

Part III of the Regulations contains provisions relating to an equalisation reserve which an insurance company is required to maintain in respect of its credit insurance business.

Regulation 11 sets out the scope of this Part of these Regulations.

Regulation 12 makes provision for section 444BA to apply where an insurance company maintains a credit insurance equalisation reserve for any accounting period.

Regulation 13 provides that paragraph 2(2) of Schedule 2 to the Insurance Companies (Reserves) Regulations 1996 (S.I.1996/946) (which provides for the amount of a reserve maintained pursuant to regulations 76 to 78 of, and Schedule 14 to, the Insurance Companies Regulations 1994 (S.I. 1994/1516) to be transferred to the credit insurance equalisation reserve) shall be disregarded for the purposes of the Tax Acts in determining how much is required to be transferred into an insurance company's credit insurance equalisation reserve.

Regulation 14 provides for regulations 5, 6, 9 and 10 to have effect, subject to regulation 13, in relation to any credit insurance equalisation reserve as they have effect in relation to any reserve to which Part II of these Regulations applies.