



# Finance Act 1990

## 1990 CHAPTER 29

### PART II

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER I

#### GENERAL

##### *Insurance companies and friendly societies*

#### **41 Apportionment of income etc**

Schedule 6 to this Act (which makes provision about the apportionment of income etc. and related provision) shall have effect.

#### **42 Overseas life assurance business**

Schedule 7 to this Act (which makes provision about the taxation of overseas life assurance business) shall have effect.

#### **43 Deduction for policy holders' tax**

- (1) In section 82(1)(a) of the Finance Act 1989 (computation of profits on Case I basis), for the words “, in respect of the period, are allocated to or expended on behalf of policy holders or annuitants” there shall be substituted the words “are allocated to, and any amounts of tax or foreign tax which are expended on behalf of, policy holders or annuitants in respect of the period”.
- (2) In section 436(3) of the Taxes Act 1988 (modified application of section 82 in relation to computations of profits of general annuity business or pension business), the words “and of the words “tax or” in section 82(1)(a)” shall be added at the end of paragraph (a).

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- (3) The Finance Act 1989 shall be deemed always to have had effect with the amendment made by subsection (1) above, and the amendment made by subsection (2) above shall have the same effect as, by virtue of section 84(5)(b) of that Act, it would have had if it had been made by Schedule 8 to that Act.

#### **44 Reinsurance commissions**

- (1) In section 85(2) of the Finance Act 1989 (receipts excluded from charge under Case VI of Schedule D), after paragraph (c) there shall be inserted—
- “(ca) any reinsurance commission; or”.
- (2) In section 86 of the Finance Act 1989 (spreading of relief for expenses), at the end of subsection (1) there shall be added the words “and less any reinsurance commissions falling within section 76(1)(ca) of that Act”.
- (3) In section 76(1) of the Taxes Act 1988 (treatment of expenses of management), after paragraph (c) there shall be inserted—
- “(ca) there shall also be deducted from the amount treated as the expenses of management for any accounting period any reinsurance commission earned in the period which is referable to basic life assurance business; and”.
- (4) Sections 85 and 86 of the Finance Act 1989 shall be deemed always to have had effect with the amendments made by subsections (1) and (2) above, and section 76 of the Taxes Act 1988 shall have effect as if the amendment made by subsection (3) above had been included among those made by section 87 of the Finance Act 1989.
- (5) Nothing in subsection (2) above applies to commissions in respect of the reinsurance of liabilities assumed by the recipient company in respect of insurances made before 14th March 1989, but without prejudice to the application of that subsection to any reinsurance commission attributable to a variation on or after that date in a policy issued in respect of such an insurance; and for this purpose the exercise of any rights conferred by a policy shall be regarded as a variation of it.

#### **45 Policy holders' share of profits etc**

- (1) In section 88 of the Finance Act 1989 (corporation tax: policy holders' fraction of profits), in subsection (1) for the words “the policy holders' fraction of its relevant profits for any accounting period shall” there shall be substituted the words—
- “(a) the policy holders' share of the relevant profits for any accounting period, or  
 (b) where the business is mutual business, the whole of those profits
- shall”.
- (2) In subsection (4) of that section, for the word “fraction” there shall be substituted the word “share”, and after the words “that period” there shall be inserted the words “, or where the business is mutual business the whole of those profits,”.
- (3) For section 89 of that Act (which defines the shareholders' and policy holders' fractions) there shall be substituted—

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### **“89 Policy holders' share of profits**

- (1) The references in section 88 above to the policy holders' share of the relevant profits for an accounting period of a company carrying on life assurance business are references to the amount arrived at by deducting from those profits the Case I profits of the company for the period in respect of the business, reduced in accordance with subsection (2) below.
- (2) For the purposes of subsection (1) above, the Case I profits for a period shall be reduced by—
  - (a) the amount, so far as unrelieved, of any franked investment income arising in the period as respects which the company has made an election under section 438(6) of the Taxes Act 1988, and
  - (b) the shareholders' share of any other unrelieved franked investment income arising in the period from investments held in connection with the business.
- (3) For the purposes of this section “the shareholders' share” in relation to any income is so much of the income as is represented by the fraction

$$\frac{\mathbf{A}}{\mathbf{B}}$$

where—

- A is an amount equal to the Case I profits of the company for the period in question in respect of its life assurance business, and
  - B is an amount equal to the excess of the company's relevant non-premium income and relevant gains over its relevant expenses and relevant interest for the period.
- (4) Where there is no such excess as is mentioned in subsection (3) above, or where the Case I profits are greater than any excess, the whole of the income shall be the shareholders' share; and (subject to that) where there are no Case I profits, none of the income shall be the shareholders' share.
  - (5) In subsection (3) above the references to the relevant non-premium income, relevant gains, relevant expenses and relevant interest of a company for an accounting period are references respectively to the following items as brought into account for the period, so far as referable to the company's life assurance business,—
    - (a) the company's investment income from the assets of its long-term business fund together with its other income, apart from premiums;
    - (b) any increase in the value (whether realised or not) of those assets;
    - (c) expenses payable by the company;
    - (d) interest payable by the company;and if for any period there is a reduction in the value referred to in paragraph (b) above (as brought into account for the period), that reduction shall be taken into account as an expense of the period.
  - (6) Except in so far as regulations made by the Treasury otherwise provide, in this section “brought into account” means brought into account in the revenue account prepared for the purposes of the Insurance Companies Act

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1982; and where the company's period of account does not coincide with the accounting period, any reference to an amount brought into account for the accounting period is a reference to the corresponding amount brought into account for the period of account in which the accounting period is comprised, proportionately reduced to reflect the length of the accounting period as compared with the length of the period of account.

- (7) In this section "Case I profits" means profits computed in accordance with the provisions of the Taxes Act 1988 applicable to Case I of Schedule D.
- (8) For the purposes of this section franked investment income is "unrelieved" if—
- (a) it has not been excluded from charge to tax by virtue of any provision,
  - (b) no tax credit comprised in it has been paid, and
  - (c) no relief has been allowed against it by deduction or set-off."
- (4) In subsection (3) of section 434 of the Taxes Act 1988 (franked investment income etc.)—
- (a) for the words "policy holders' fraction" in both places where they occur there shall be substituted the words "policy holders' share";
  - (b) in paragraph (a), after the word "income" there shall be inserted the words "from investments held in connection with the company's life assurance business";
  - (c) in paragraph (b), for the words "only to the shareholders' fraction of that income" there shall be substituted the words "to that income excluding the amount within paragraph (a) above".
- (5) In subsection (3A) of that section, for the word "fraction" there shall be substituted the word "share".
- (6) In subsection (6) of that section, for the word "therefrom" onwards there shall be substituted the words "the policy holders' share of the relevant profits".
- (7) After subsection (6) of that section there shall be inserted—
- “(6A) For the purposes of this section—
- (a) “the policy holders' share” of any franked investment income is so much of that income as is not the shareholders' share within the meaning of section 89 of the Finance Act 1989, and
  - (b) “the policy holders' share of the relevant profits” has the same meaning as in section 88 of that Act.”
- (8) In section 434A of the Taxes Act 1988—
- (a) in subsection (1), for the word "fraction" there shall be substituted the word "share", and
  - (b) in subsection (2), for the words "the relevant profits" onwards there shall be substituted the words "“the policy holders' share of the relevant profits” has the same meaning as in section 88 of the Finance Act 1989”.
- (9) In section 438 of the Taxes Act 1988, in subsection (6) after the words "part of its" there shall be inserted the word "relevant", and after that subsection there shall be inserted—

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“(6A) In subsection (6) above “relevant franked investment income” means the shareholders' share of franked investment income within subsection (1) above, and for this purpose “shareholders' share” has the same meaning as for the purposes of section 89 of the Finance Act 1989.”

- (10) The Finance Act 1989 shall be deemed always to have had effect with the amendments made by subsections (1) to (3) above, and the amendments made by subsections (4) to (9) above shall have the same effect as, by virtue of section 84(5)(b) of that Act, they would have had if they had been made by Schedule 8 to that Act.
- (11) Paragraphs 1 and 3(3) of Schedule 8 to the Finance Act 1989 shall be deemed never to have had effect.

#### **46 Annual deemed disposal of holdings of unit trusts etc**

- (1) Where at the end of an accounting period the assets of an insurance company's long term business fund include—
- (a) rights under an authorised unit trust, or
  - (b) relevant interests in an offshore fund,
- then, subject to the following provisions of this section and to section 47 below, the company shall be deemed for the purposes of corporation tax on capital gains to have disposed of and immediately re-acquired each of the assets concerned at its market value at that time.
- (2) Subsection (1) above shall not apply to assets linked solely to pension business or to assets of the overseas life assurance fund, and in relation to other assets (apart from assets linked solely to basic life assurance business) shall apply only to the relevant chargeable fraction of each class of asset.
- (3) For the purposes of subsection (2) above “the relevant chargeable fraction” in relation to linked assets is the fraction of which—
- (a) the denominator is the mean of such of the opening and closing long term business liabilities as are liabilities in respect of benefits to be determined by reference to the value of linked assets, other than assets linked solely to basic life assurance business or pension business and assets of the overseas life assurance fund; and
  - (b) the numerator is the mean of such of the opening and closing liabilities within paragraph (a) above as are liabilities of business the profits of which are not charged to tax under Case I or Case VI of Schedule D (disregarding section 85 of the Finance Act 1989).
- (4) For the purposes of subsection (2) above “the relevant chargeable fraction” in relation to assets other than linked assets is the fraction of which—
- (a) the denominator is the aggregate of—
    - (i) the mean of the opening and closing long term business liabilities, other than liabilities in respect of benefits to be determined by reference to the value of linked assets and liabilities of the overseas life assurance business, and
    - (ii) the mean of the opening and closing amounts of the investment reserve; and
  - (b) the numerator is the aggregate of—

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- (i) the mean of such of the opening and closing liabilities within paragraph (a) above as are liabilities of business the profits of which are not charged to tax under Case I or Case VI of Schedule D (disregarding section 85 of the Finance Act 1989), and
  - (ii) the mean of the appropriate parts of the opening and closing amounts of the investment reserve.
- (5) For the purposes of this section an interest is a “relevant interest in an offshore fund” if—
- (a) it is a material interest in an offshore fund for the purposes of Chapter V of Part XVII of the Taxes Act 1988, or
  - (b) it would be such an interest if the shares and interests excluded by subsections (6) and (8) of section 759 of that Act were limited to shares or interests in trading companies.
- (6) For the purposes of this section the amount of an investment reserve and the “appropriate part” of it shall be determined in accordance with section 432A(8) and (9) of the Taxes Act 1988.
- (7) In this section—
- “authorised unit trust” has the same meaning as in section 468 of the Taxes Act 1988;
  - “market value” has the same meaning as in the Capital Gains Tax Act 1979;
  - “trading company” means a company—
    - (a) whose business consists of the carrying on of insurance business, or the carrying on of any other trade which does not consist to any extent of dealing in commodities, currency, securities, debts or other assets of a financial nature, or
    - (b) whose business consists wholly or mainly of the holding of shares or securities of trading companies which are its 90 per cent. subsidiaries;
- and in this section and section 47 below other expressions have the same meanings as in Chapter I of Part XII of the Taxes Act 1988.
- (8) Schedule 8 to this Act (which contains transitional provisions relating to the charge imposed by this section) shall have effect.
- (9) Subject to the provisions of Schedule 8, this section shall have effect in relation to accounting periods beginning on or after 1st January 1991 or, where the Treasury by order appoint a later day, in relation to accounting periods beginning on or after that day (and not in relation to any earlier accounting period, even if the order is made after 1st January 1991 and the period has ended before it is made).

#### **47 Spreading of gains and losses under section 46**

- (1) Any chargeable gains or allowable losses which would otherwise accrue on disposals deemed by virtue of section 46 above to have been made at the end of a company’s accounting period shall be treated as not accruing to it, but instead—
- (a) there shall be ascertained the difference (“the net amount”) between the aggregate of those gains and the aggregate of those losses, and
  - (b) one seventh of the net amount shall be treated as a chargeable gain or, where it represents an excess of losses over gains, as an allowable loss accruing to the company at the end of the accounting period, and

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- (c) a further one seventh shall be treated as a chargeable gain or, as the case may be, as an allowable loss accruing at the end of each succeeding accounting period until the whole amount has been accounted for.
- (2) For any accounting period of less than one year, the fraction of one seventh referred to in subsection (1)(c) above shall be proportionately reduced; and where this subsection has had effect in relation to any accounting period before the last for which subsection (1)(c) above applies, the fraction treated as accruing at the end of that last accounting period shall also be adjusted appropriately.
- (3) Where—
  - (a) the net amount for an accounting period of an insurance company represents an excess of gains over losses,
  - (b) the net amount for one of the next six accounting periods (after taking account of any reductions made by virtue of this subsection) represents an excess of losses over gains,
  - (c) there is (after taking account of any such reductions) no net amount for any intervening accounting period, and
  - (d) within two years after the end of the later accounting period the company makes a claim for the purpose in respect of the whole or part of the net amount for that period,the net amounts for both the earlier and the later period shall be reduced by the amount in respect of which the claim is made.
- (4) Subject to subsection (5) below, where a company ceases to carry on long term business before the end of the last of the accounting periods for which subsection (1)(c) above would apply in relation to a net amount, the fraction of that amount that is treated as accruing at the end of the accounting period ending with the cessation shall be such as to secure that the whole of the net amount has been accounted for.
- (5) Where there is a transfer of the whole or part of the long term business of an insurance company (“the transferor”) to another company (“the transferee”) in accordance with a scheme sanctioned by a court under section 49 of the Insurance Companies Act 1982, any chargeable gain or allowable loss which (assuming that the transferor had continued to carry on the business transferred) would have accrued to the transferor by virtue of subsection (1) above after the transfer shall instead be deemed to accrue to the transferee.
- (6) Where subsection (5) above has effect, the amount of the gain or loss accruing at the end of the first accounting period of the transferee ending after the day when the transfer takes place shall be calculated as if that accounting period began with the day after the transfer.
- (7) Where the transfer is of part only of the transferor’s long term business, subsection (5) above shall apply only to such part of any amount to which it would otherwise apply as is appropriate.
- (8) Any question arising as to the operation of subsection (7) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and transferee shall be entitled to appear and be heard or to make representations in writing.

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#### **48 Transfers of long term business**

Schedule 9 to this Act (which makes provision about the tax consequences of certain transfers of long term business by insurance companies) shall have effect.

#### **49 Friendly societies: increased tax exemption**

- (1) In subsection (2) of section 460 of the Taxes Act 1988 (exemption from tax for profits of friendly society arising from life or endowment business), in paragraph (c)—
  - (a) in sub-paragraph (i), for “£100” there shall be substituted “£150”; and
  - (b) after that sub-paragraph there shall be inserted—
    - “(ia) where the profits relate to contracts made after 31st August 1987 but before 1st September 1990, of the assurance of gross sums under contracts under which the total premiums payable in any period of 12 months exceed £100;”.
- (2) In subsection (3) of that section, for the words “of subsection (2)(c)(i)” there shall be substituted the words “of subsection (2)(c)(i) or (ia)”.
- (3) In subsection (3) of section 464 of that Act (maximum benefits payable to members of friendly societies), for the words from “Kingdom” to the end there shall be substituted the words “Kingdom)—
  - (a) contracts under which the total premiums payable in any period of 12 months exceed £150; or
  - (b) contracts made before 1st September 1990 under which the total premiums payable in any period of 12 months exceed £100,

unless all those contracts were made before 1st September 1987.”
- (4) In subsection (4) of that section, for the word “limit” there shall be substituted the word “limits”.
- (5) In paragraph 3(8)(b)(ii) of Schedule 15 to that Act (amount of premiums to be disregarded in determining whether a policy meets conditions for it to be a qualifying policy), after the word “premiums” there shall be inserted the words “or, where those premiums are payable otherwise than annually, an amount equal to 10 per cent. of those premiums if that is greater”.

#### **50 Friendly societies: application of enactments**

- (1) Section 463 of the Taxes Act 1988 (application to life or endowment business of friendly societies of Corporation Tax Acts as they apply to mutual life assurance business) shall be renumbered as subsection (1) of that section.
- (2) After that provision as so renumbered there shall be added—
  - “(2) The provisions of the Corporation Tax Acts which apply on the transfer of the whole or part of the long term business of an insurance company to another company shall apply in the same way—
    - (a) on the transfer of the whole or part of the business of a friendly society to another friendly society (and on the amalgamation of friendly societies), and



- (b) on the transfer of the whole or part of the business of a friendly society to a company which is not a friendly society (and on the conversion of a friendly society into such a company),

so however that the Treasury may by regulations provide that those provisions as so applied shall have effect subject to such modifications and exceptions as may be prescribed by the regulations.

- (3) The Treasury may by regulations provide that the provisions of the Corporation Tax Acts which apply on the transfer of the whole or part of the long term business of an insurance company to another company shall have effect where the transferee is a friendly society subject to such modifications and exceptions as may be prescribed by the regulations.
- (4) Regulations under this section may make different provision for different cases and may include provision having retrospective effect.”