

SCHEDULES

SCHEDULE 9

Section 48.

INSURANCE COMPANIES: TRANSFERS OF LONG TERM BUSINESS

Capital gains

1 After section 267 of the Taxes Act 1970 there shall be inserted—

“267A Insurance companies: transfers of business

- (1) Insurance companies: transfers of business. This section applies 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.
- (2) Subject to subsection (3) below, where this section applies section 267 above shall not be prevented from having effect in relation to any asset included in the transfer by reason that—
 - (a) the transfer is not part of a scheme of reconstruction or amalgamation,
 - (b) the condition in paragraph (c) of subsection (1) of that section is not satisfied, or
 - (c) the asset is within subsection (2) of that section;and where section 267 above applies by virtue of paragraph (a) above the references in subsection (3A) of that section to the reconstruction or amalgamation shall be construed as references to the transfer.
- (3) Section 267 above shall not have effect in relation to an asset by virtue of subsection (2) above unless—
 - (a) any gain accruing to the transferor—
 - (i) on the disposal of the asset in accordance with the scheme, or
 - (ii) where that disposal occurs after the transfer of business has taken place, on a disposal of the asset immediately before that transfer, and
 - (b) any gain accruing to the transferee on a disposal of the asset immediately after its acquisition in accordance with the scheme, would be a chargeable gain which would form part of its profits for corporation tax purposes (and would not be a gain on which, under any double taxation arrangements having effect by virtue of section 788 of the Taxes Act 1988, it would not be liable to tax).”

2 In section 127 of the Finance Act 1989, after subsection (3) (deemed disposal and reacquisition where a person ceases to carry on trade in United Kingdom through branch or agency) there shall be inserted—

“(3A) Subsection (3) above shall not apply to an asset by reason of a transfer of the whole or part of the long term business of an insurance company to another company if section 267 of the Taxes Act 1970 has effect in relation to the asset by virtue of section 267A of that Act.”

Accounting periods

3 In section 12 of the Taxes Act 1988, after subsection (7) there shall be inserted—

“(7A) Notwithstanding anything in subsections (1) to (7) above, where there is a transfer of the whole or part of the long term business of an insurance company to another company in accordance with a scheme sanctioned by a court under section 49 of the Insurance Companies Act 1982, an accounting period of the company from which the business is transferred shall end with the day of the transfer.”

Expenses of management and losses

4 The following section shall be inserted after section 444 of the Taxes Act 1988—

“444A Transfers of business

- (1) Subject to the following provisions of this section, this section applies 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.
- (2) Any expenses of management which (assuming the transferor had continued to carry on the business transferred after the transfer) would have been deductible by the transferor under sections 75 and 76 in computing profits for an accounting period following the period which ends with the day on which the transfer takes place shall, instead, be treated as expenses of management of the transferee (and deductible in accordance with those sections, as modified in the case of acquisition expenses by section 86(6) to (9) of the Finance Act 1989 and in the case of expenses to which subsection (6) or (7) of section 87 of that Act applies by that subsection).
- (3) Any loss which (assuming the transferor had continued to carry on the business transferred after the transfer)—
 - (a) would have been available under section 436(3)(c) to be set off against profits of the transferor for the accounting period following that which ends with the day on which transfer takes place, or
 - (b) where in connection with the transfer the transferor also transfers the whole or part of any overseas life assurance business, would have been so available under section 441(4)(b),
 shall, instead, be treated as a loss of the transferee (and available to be set off against profits of the same class of business as that in which it arose).

Status: This is the original version (as it was originally enacted).

- (4) Where acquisition expenses are treated as expenses of management of the transferee by virtue of subsection (2) above, the amount deductible for the first accounting period of the transferee ending after the transfer takes place shall be calculated as if that accounting period began with the day after the transfer.
- (5) Where the transfer is of part only of the transferor's long term business, subsection (2) or (3) above shall apply only to such part of any amount to which it would otherwise apply as is appropriate.
- (6) Any question arising as to the operation of subsection (5) 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.
- (7) Subject to subsection (8) below, this section shall not apply unless the transfer is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax.
- (8) Subsection (7) above shall not affect the operation of this section in any case where, before the transfer, the Board have, on the application of the transferee, notified the transferee that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any scheme or arrangements such as are mentioned in that subsection; and subsections (2) to (5) of section 88 of the 1979 Act shall have effect in relation to this subsection as they have effect in relation to subsection (1) of that section."

Capital allowances

5 After section 152 of the Capital Allowances Act 1990 there shall be inserted—

“152A Insurance companies: transfers of business

- (1) This section applies where assets are transferred as part of, or in connection with, 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.
- (2) Where this section applies—
 - (a) there shall be made, in accordance with this Act, to or on the transferee (instead of the transferor) any such allowances and charges as would have fallen to be made to or on the transferor; and
 - (b) the amount of any such allowance or charge shall be computed as if everything done to or by the transferor had been done to or by the transferee (but so that no sale or transfer of assets which is made to the transferee by the transferor shall be treated as giving rise to any such allowance or charge).”

Status: This is the original version (as it was originally enacted).

Transfer to friendly society

- 6 In section 460 of the Taxes Act 1988, after subsection (10) there shall be inserted—
- “(10A) Where at any time there is a transfer of the whole or part of the long term business of an insurance company to a friendly society in accordance with a scheme sanctioned by a court under section 49 of the Insurance Companies Act 1982, any life or endowment business which relates to contracts included in the transfer shall not thereafter be tax exempt life or endowment business for the purposes of this Chapter.”

Commencement

- 7 This Schedule shall apply to transfers of business taking place on or after 1st January 1990; and (subject to that) the amendment made by paragraph 5 of this Schedule shall apply in relation to accounting periods ending on or before 5th April 1990 as well as in relation to later accounting periods.