



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART VI

COMPANIES, OIL, INSURANCE ETC.

### CHAPTER III

INSURANCE

#### **204 Policies of insurance**

- (1) The rights of the insurer under any policy of insurance shall not constitute an asset on the disposal of which a gain may accrue, whether the risks insured relate to property or not; and the rights of the insured under any policy of insurance of the risk of any kind of damage to, or the loss or depreciation of, assets shall constitute an asset on the disposal of which a gain may accrue only to the extent that those rights relate to assets on the disposal of which a gain may accrue or might have accrued.
- (2) Notwithstanding subsection (1) above, sums received under a policy of insurance of the risk of any kind of damage to, or the loss or depreciation of, assets are for the purposes of this Act, and in particular for the purposes of section 22, sums derived from the assets.
- (3) Where any investments or other assets are or have been, in accordance with a policy issued in the course of life assurance business carried on by an insurance company, transferred to the policy holder on or after 6th April 1967, the policy holder's acquisition of the assets and the disposal of them to him shall be deemed to be, for the purposes of this Act, for a consideration equal to the market value of the assets.
- (4) In subsections (1) and (2) above "policy of insurance" does not include a policy of assurance on human life and in subsection (3) "life assurance business" and "insurance company" have the same meaning as in Chapter I of Part XII of the Taxes Act.

**205 Disallowance of insurance premiums as expenses**

Without prejudice to the provisions of section 39, there shall be excluded from the sums allowable as a deduction in the computation of the gain accruing on the disposal of an asset any premiums or other payments made under a policy of insurance of the risk of any kind of damage or injury to, or loss or depreciation of, the asset.

**206 Underwriters**

- (1) An underwriting member of Lloyd's shall, subject to the following provisions of this section, be treated for the purposes of this Act as absolutely entitled as against the trustees to the investments of his premiums trust fund, his special reserve fund (if any) and any other trust fund required or authorised by the rules of Lloyd's or required by the underwriting agent through whom his business or any part of it is carried on, to be kept in connection with the business.
- (2) The trustees of any premiums trust fund shall, subject to subsections (3) and (4) below, be assessed and charged to capital gains tax as if subsection (1) above had not been passed.
- (3) Tax assessed by virtue of subsection (2) above for a year of assessment shall be assessed at a rate equivalent to the basic rate of income tax for the year; and if an assessment to tax at a higher rate is subsequently made on an underwriting member in respect of the same gains, an appropriate credit shall be given for the tax assessed on the trustees.
- (4) The assessment to be made on the trustees of a fund by virtue of subsection (2) above for any year of assessment shall not take account of losses accruing in any previous year of assessment, and if for that or any other reason the tax paid on behalf of an underwriting member for any year of assessment by virtue of assessments so made exceeds the capital gains tax for which he is liable, the excess shall, on a claim by him, be repaid.
- (5) For the purposes of subsections (2) to (4) above the underwriting agent may be treated as a trustee of the premiums trust fund.

**207 Disposal of assets in premiums trust fund etc**

- (1) Subject to subsection (6) below, the chargeable gains or allowable losses accruing on the disposal of assets forming part of a premiums trust fund shall be taken to be those allocated to the corresponding underwriting year.
- (2) The amount of the gains or losses so allocated at the end of any accounting period shall be such proportion of the difference mentioned in subsection (3) below as is allocated to the underwriting year under the rules or practice of Lloyd's.
- (3) That difference is the difference between the valuations at the beginning and at the end of the accounting period of the assets forming part of the fund, the value at the beginning of the period of assets acquired during the period being taken as the cost of acquisition and the value at the end of the period of assets disposed of during the period being taken as the consideration for the disposal.
- (4) Subsection (5) below applies where the following state of affairs exists at the beginning of an accounting period or the end of an accounting period—

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- (a) securities have been transferred after 18th August 1989 by the trustees of a premiums trust fund in pursuance of an arrangement mentioned in section 129(1) or (2) of the Taxes Act (stock lending),
  - (b) the transfer was made to enable another person to fulfil a contract or to make a transfer,
  - (c) securities have not been transferred in return, and
  - (d) the transfer made by the trustees constitutes a disposal which by virtue of section 271(9) is to be disregarded as there mentioned.
- (5) The securities transferred by the trustees shall be treated for the purposes of subsection (3) above as if they formed part of the premiums trust fund at the beginning concerned or the end concerned (as the case may be).
- (6) Subsections (1) to (3) above do not apply to gilt-edged securities and qualifying corporate bonds.

## **208 Premiums trust funds: indexation**

Sections 53 to 57, 104, 108, 109, 110, 113, 114, 131 and 145 shall apply with any necessary modifications in relation to assets forming part of a premiums trust fund as they apply in relation to other assets, and for the purposes of the application of those sections in accordance with this section, it shall be assumed—

- (a) that assets forming part of a fund are disposed of and immediately reacquired on the last day of each accounting period; and
- (b) that the indexation allowance computed for that accounting period is allocated to the corresponding underwriting year in the same proportion as the gains or losses referred to in section 207(2).

## **209 Interpretation, regulations about underwriters etc**

- (1) Expressions used in this section or sections 206 to 208 and in sections 450 to 456 of the Taxes Act (Lloyds underwriters) have the same meanings as they have for the purposes of sections 450 to 456.
- (2) The Board may by regulations provide—
- (a) for the assessment and collection of tax charged in accordance with section 207;
  - (b) for modifying the provisions of that section in relation to syndicates continuing for more than 2 years after the end of an underwriting year;
  - (c) for giving credit for foreign tax.
- (3) Subsection (4) below applies in the case of any provision of the Tax Acts, the Management Act, this Act or any other enactment relating to capital gains tax, which imposes a time limit for making a claim or an election or an application.
- (4) The Board may by regulations provide that where the claim or election or application falls to be made by an underwriting member of Lloyd's or his spouse (or both) the provision shall have effect as if it imposed such longer time limit as is specified in the regulations.
- (5) Regulations under subsection (4) above may make different provision for different provisions or different purposes.

- (6) Regulations under subsection (2) or (4) above may make provision with respect to any year or years of assessment; and the year (or any of the years) may be the one in which the regulations are made or any year falling before or after that year (including years earlier than 1992-93), but regulations under subsection (2) may not make provision with respect to any year of assessment which precedes the next but one preceding the year of assessment in which the regulations are made.

## **210 Life assurance and deferred annuities**

- (1) This section has effect as respects any policy of assurance or contract for a deferred annuity on the life of any person.
- (2) No chargeable gain shall accrue on the disposal of, or of an interest in, the rights under any such policy of assurance or contract except where the person making the disposal is not the original beneficial owner and acquired the rights or interest for a consideration in money or money's worth.
- (3) Subject to subsection (2) above, the occasion of—
- (a) the payment of the sum or sums assured by a policy of assurance, or
  - (b) the transfer of investments or other assets to the owner of a policy of assurance in accordance with the policy,
- and the occasion of the surrender of a policy of assurance, shall be the occasion of a disposal of the rights under the policy of assurance.
- (4) Subject to subsection (2) above, the occasion of the payment of the first instalment of a deferred annuity, and the occasion of the surrender of the rights under a contract for a deferred annuity, shall be the occasion of a disposal of the rights under the contract for a deferred annuity and the amount of the consideration for the disposal of a contract for a deferred annuity shall be the market value at that time of the right to that and further instalments of the annuity.

## **211 Transfers of business**

- (1) 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 139 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 139 applies by virtue of paragraph (a) above the references in subsection (5) of that section to the reconstruction or amalgamation shall be construed as references to the transfer.
- (3) Section 139 shall not have effect in relation to an asset by virtue of subsection (2) above unless—
- (a) any gain accruing to the transferor—

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- (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 relief arrangements, it would not be liable to tax).

## **212 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 213, the company shall be deemed for the purposes of corporation tax on capital gains to have disposed of and immediately reacquired 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 and general annuity 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 and general annuity 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—
    - (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

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- (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, 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.
- (7) In this section “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 sections 213 and 214 other expressions have the same meanings as in Chapter I of Part XII of the Taxes Act.
- (8) Subject to section 214, 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).

### **213 Spreading of gains and losses under section 212**

- (1) Any chargeable gains or allowable losses which would otherwise accrue on disposals deemed by virtue of section 212 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
  - (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 6 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 2 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.
- (9) It is hereby declared that amounts to which section 47(1)(b) and (c) of the Finance Act 1990 applied immediately before the commencement of this section shall continue to be subject to the provisions of this section (with any necessary modifications).

## 214 Transitional provisions

- (1) In this section—
  - (a) “section 212 assets” means rights under authorised unit trusts and relevant interests in offshore funds which are assets of a company’s long term business fund;
  - (b) “linked section 212 assets” means section 212 assets which are linked assets;

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- (c) “relevant linked liabilities”, in relation to a company, means such of the liabilities of its basic life assurance and general annuity business as are liabilities in respect of benefits under pre-commencement policies or contracts, being benefits to be determined by reference to the value of linked assets;
- (d) “pre-commencement policies or contracts” means—
- (i) policies issued in respect of insurances made before 1st April 1990, and
  - (ii) annuity contracts made before that date,
- but excluding policies or annuity contracts varied on or after that date so as to increase the benefits secured or to extend the term of the insurance or annuity (any exercise of rights conferred by a policy or annuity contract being regarded for this purpose as a variation);
- (e) “basic life assurance and general annuity business” means life assurance business, other than pension business and overseas life assurance business.
- (2) The assets which are to be regarded for the purposes of this section as linked solely to an insurance company’s basic life assurance and general annuity business at any time before the first accounting period of the company which begins on or after 1st January 1992 are all the assets which at that time—
- (a) are or were linked solely to the company’s basic life assurance business or general annuity business, or
  - (b) although not falling within paragraph (a) above, would be, or would have been, regarded as linked solely to the company’s basic life assurance business, were its general annuity business treated as forming, or having at all times formed, part of its basic life assurance business and as not being a separate category of business.
- (3) Where within 2 years after the end of an accounting period an insurance company makes a claim for the purpose in relation to the period, section 212(1) shall not apply at the end of the period to so much of any class of linked assets as it would otherwise apply to and as represents relevant linked liabilities.
- (4) For the purposes of subsection (3) above assets of any class shall be taken to represent relevant linked liabilities only to the extent that their value does not exceed the fraction set out in subsection (5) below of such of the company’s relevant linked liabilities as are liabilities in respect of benefits to be determined by reference to the value of assets of that class.
- (5) The fraction referred to in subsection (4) above is—

$$\frac{A \times C \times 110}{B \times D \times 100}$$

where—

A is the amount at the end of 1989 of such of the company’s relevant linked liabilities as are liabilities in respect of benefits to be determined by reference to the value of linked section 212 assets;

B is the amount of the company’s relevant linked liabilities at that time;

C is the amount of the company’s relevant linked liabilities at the end of the accounting period for which the claim is made;



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D is the amount at the end of that period of such of the company's relevant linked liabilities as are liabilities in respect of benefits to be determined by reference to the value of linked section 212 assets.

- (6) Subject to subsection (7) below, subsection (9) below applies where—
- (a) after the end of 1989 an insurance company exchanges section 212 assets (“the old assets”) for other assets (“the new assets”) to be held as assets of the long term business fund,
  - (b) the new assets are not section 212 assets but are assets on the disposal of which any gains accruing would be chargeable gains,
  - (c) both the old assets and the new assets are linked solely to basic life assurance and general annuity business, or both are neither linked solely to basic life assurance and general annuity business or pension business nor assets of the overseas life assurance fund, and
  - (d) the company makes a claim for the purpose within 2 years after the end of the accounting period in which the exchange occurs.
- (7) Subsection (6) above shall have effect in relation to old assets only to the extent that their amount, when added to the amount of any assets to which subsection (9) below has already applied and which are assets of the same class, does not exceed the aggregate of—
- (a) the amount of the assets of the same class included in the long term business fund at the beginning of 1990, other than assets linked solely to pension business and assets of the overseas life assurance fund, and
  - (b) 110 per cent. of the amount of the assets of that class which represents any subsequent increases in the company's relevant linked liabilities in respect of benefits to be determined by reference to the value of assets of that class.
- (8) The reference in subsection (7)(b) above to a subsequent increase in liabilities is a reference to any amount by which the liabilities at the end of an accounting period ending after 31st December 1989 exceed those at the beginning of the period (or at the end of 1989 if that is later); and for the purposes of that provision the amount of assets which represents an increase in liabilities is the excess of—
- (a) the amount of assets whose value at the later time is equivalent to the liabilities at that time, over
  - (b) the amount of assets whose value at the earlier time is equivalent to the liabilities at that time.
- (9) Where this subsection applies, the insurance company (but not any other party to the exchange) shall be treated for the purposes of corporation tax on capital gains as if the exchange had not involved a disposal of the old assets or an acquisition of the new, but as if the old and the new assets were the same assets acquired as the old assets were acquired.
- (10) References in subsections (6) to (9) above to the exchange of assets include references to the case where the consideration obtained for the disposal of assets (otherwise than by way of an exchange within subsection (6)) is applied in acquiring other assets within 6 months after the disposal; and for the purposes of those subsections the time when an exchange occurs shall be taken to be the time when the old assets are disposed of.
- (11) Where at any time after the end of 1989 there is a transfer of long term business of an insurance company (“the transferor”) to another company (“the transferee”) in

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accordance with a scheme sanctioned by a court under section 49 of the Insurance Companies Act 1982—

- (a) if the transfer is of the whole of the long term business of the transferor, subsections (1) to (10) above shall have effect in relation to the assets of the transferee as if that business had at all material times been carried on by him;
- (b) if the transfer is of part of the long term business of the transferor, those subsections shall have effect in relation to assets of the transferor and the transferee to such extent as is appropriate;

and any question arising as to the operation of paragraph (b) 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 the transferee shall be entitled to appear and be heard or to make representations in writing.