



# Finance Act 1993

## 1993 CHAPTER 34

### PART II

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

### CHAPTER III

#### LLOYD'S UNDERWRITERS ETC.

##### *Main provisions*

#### **171 Taxation of profits and allowance of losses**

- (1) Income tax for any year of assessment on the profits arising from a member's underwriting business shall be computed on the profits of that year of assessment.
- (2) As respects the profits arising to a member from his underwriting business for any year of assessment—
  - (a) the aggregate of those profits shall be chargeable to tax under Case I of Schedule D; and
  - (b) accordingly, no part of those profits shall be chargeable to tax under any other Schedule or any other Case of Schedule D;but nothing in this subsection shall affect the manner in which the amount of any profits arising from assets forming part of an ancillary trust fund is to be computed.
- (3) Relief under section 380 of the Taxes Act 1988 (set-off against general income) in respect of a loss sustained by a member in his underwriting business in any year of assessment—
  - (a) shall not be given under subsection (2) of that section; but
  - (b) may, if the member so claims and he was a member in the preceding year of assessment, be given against his income for that preceding year, so far as it

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cannot be given against the income for the year in which the loss was sustained and can be given after any relief for a loss sustained in that preceding year.

- (4) Subsection (2) above does not apply in relation to any profits arising before 6th April 1993 from assets forming part of an ancillary trust fund.

### **172 Year of assessment in which profits or losses arise**

- (1) Subject to the provisions of this Chapter, for the purposes of section 171 above and all other purposes of the Income Tax Acts the profits or losses in any year of assessment of a member’s underwriting business shall be taken to be—
- (a) in the case of profits or losses arising directly from his membership of one or more syndicates, those arising in respect of the corresponding underwriting year;
  - (b) in the case of profits or losses arising from assets forming part of a premiums trust fund, those allocated under the rules or practice of Lloyd’s to the corresponding underwriting year; and
  - (c) in the case of other profits or losses, those derived from payments received or made in the corresponding underwriting year.
- (2) Subsection (1)(c) above does not apply in relation to payments received or made before 6th April 1993.

### **173 Assessment and collection of tax**

- (1) Schedule 19 to this Act (assessment and collection of tax) shall have effect.
- (2) Schedule 19A to the Taxes Act 1988 (which is superseded by Schedule 19 to this Act for the year 1992-93 and subsequent years of assessment) shall have effect as if for sub-paragraph (3) of paragraph 1 there were substituted the following sub-paragraph—
- “(3) Regulations under this paragraph may make provision with respect to any year or years of assessment; and the year (or any of the years) may be the year next but one preceding the year in which the regulations are made or any year following that earlier year.”
- (3) Subsection (2) above applies in relation to regulations made after the passing of this Act.

### *Members’ trust funds*

### **174 Premiums trust funds**

- (1) A member shall be treated for the purposes of the Income Tax Acts and the Gains Tax Acts as absolutely entitled as against the trustees to the assets forming part of a premiums trust fund of his.
- (2) Where an asset forms part of a premiums trust fund at the beginning of any underwriting year, for the purposes of the Income Tax Acts—
- (a) the trustees of the fund shall be treated as acquiring it on that day, and
  - (b) they shall be treated as paying in respect of the acquisition an amount equal to the value of the asset at the time of the acquisition.

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- (3) Where an asset forms part of a premiums trust fund at the end of any underwriting year, for the purposes of the Income Tax Acts—
  - (a) the trustees of the fund shall be treated as disposing of it on that day, and
  - (b) they shall be treated as obtaining in respect of the disposal an amount equal to the value of the asset at the time of the disposal.
- (4) Subsection (5) below applies where the following state of affairs exists at the beginning of any underwriting year or the end of any such year—
  - (a) securities have been transferred by the trustees of a premiums trust fund in pursuance of an arrangement mentioned in section 129(1), (2) or (2A) of the Taxes Act 1988,
  - (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) section 129(3) of that Act applies to the transfer made by the trustees.
- (5) The securities transferred by the trustees shall be treated for the purposes of subsections (2) and (3) above as if they formed part of the premiums trust fund at the beginning or (as the case may be) the end of the underwriting year concerned.
- (6) Subsections (2) to (5) above do not apply to FOTRA securities forming part of a member's premiums trust fund at the beginning or end of any underwriting year if—
  - (a) the member is not domiciled in the United Kingdom at any time in the year, and
  - (b) he is either not ordinarily resident in the United Kingdom during the year or a non-resident United Kingdom trader in the year.
- (7) In this section—

“FOTRA securities” has the same meaning as in section 715 of the Taxes Act 1988 (exceptions from accrued income scheme);

“non-resident United Kingdom trader” shall be construed in accordance with subsection (5) of that section;

“underwriting year” does not include the year 1993 or any earlier underwriting year.

## **175 Special reserve funds**

- (1) If arrangements are made by the Council of Lloyd's which—
  - (a) enable such a special reserve fund as is referred to in Part I of Schedule 20 to this Act to be set up in relation to each member; and
  - (b) comply with the requirements of that Part and are approved by the Board, the provisions of that Part relating to taxation shall have effect in relation to any special reserve fund of a member set up under the arrangements.
- (2) The arrangements may from time to time be varied with the consent of the Board.
- (3) If, after giving notice of their intention to do so to the Council of Lloyd's, the Board cancel the approval which they have given with respect to the arrangements, paragraph 3 of Schedule 20 to this Act shall not apply, in the case of any member, to any year of assessment after the year of assessment in which the approval is cancelled.

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- (4) The provisions of Part II of Schedule 20 to this Act shall have effect as respects the winding up of any special reserve fund which—
- (a) was set up under the arrangements mentioned in section 452(1) of the Taxes Act 1988; and
  - (b) belongs to a member for whom a special reserve fund may be set up under the arrangements mentioned in subsection (1) above.

### **176 Ancillary trust funds**

- (1) A member shall be treated for the purposes of the Income Tax Acts and the Gains Tax Acts as absolutely entitled as against the trustees to the assets forming part of an ancillary trust fund of his.
- (2) The cost of acquisition and the consideration for the disposal of assets forming part of an ancillary trust fund—
  - (a) shall be left out of account in computing for the purposes of income tax the profits or losses of the member’s underwriting business; and
  - (b) accordingly, shall not be excluded for the purposes of capital gains tax under section 37 or 39 of the Gains Tax Act.
- (3) None of the following provisions (which apply where an individual entitled to securities dies), namely—
  - (a) subsections (1) to (4) of section 721 of the Taxes Act 1988 (accrued income scheme);
  - (b) paragraph 7(2) of Schedule 4 to that Act (deep discount securities);
  - (c) paragraph 7(1) of Schedule 11 to the Finance Act 1989 (deep gain securities); and
  - (d) paragraph 16(1) of Schedule 10 to the Finance Act 1990 (convertible securities),
 shall apply where the individual concerned is a member and the security concerned forms part of an ancillary trust fund of his.
- (4) In a case where subsection (3)(a) above applies, the deceased’s personal representatives shall be treated for the purposes of sections 710 to 728 of the Taxes Act 1988 as the transferor or transferee in relation to transfers of securities as to which the deceased was the transferor or transferee (as the case may be) in the interest period in which he died.

### *Other special cases*

### **177 Reinsurance to close**

- (1) This section applies where—
  - (a) in accordance with the rules or practice of Lloyd’s and in consideration of the payment of a premium, one member agrees with another to meet liabilities arising from the latter’s underwriting business for an underwriting year so that the accounts of the business for that year may be closed; and
  - (b) the member by whom the premium is payable is a continuing member, that is, a member not only of the syndicate as a member of which he is liable to pay

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the premium (“the reinsured syndicate”) but also of the syndicate as a member of which the other member is entitled to receive it (“the reinsurer syndicate”).

- (2) In computing for the purposes of income tax the profits of the continuing member’s underwriting business as a member of the reinsured syndicate, the amount of the premium shall be deductible as an expense of his only to the extent that it is shown not to exceed a fair and reasonable assessment of the value of the liabilities in respect of which it is payable.
- (3) In computing for those purposes the profits of the continuing member’s underwriting business as a member of the reinsurer syndicate, those profits shall be reduced by an amount equal to any part of a premium which, by virtue of subsection (2) above, is not deductible as an expense of his as a member of the reinsured syndicate.
- (4) The assessment referred to in subsection (2) above shall be taken to be fair and reasonable only if it is arrived at with a view to producing the result that a profit does not accrue to the member to whom the premium is payable but that he does not suffer a loss.

#### **178 Stop-loss and quota share insurance**

- (1) In computing for the purposes of income tax the profits of a member’s underwriting business, each of the following shall be deductible as an expense, namely—
  - (a) any premium payable by him under a stop-loss insurance, and any repayment of insurance money paid to him under such an insurance;
  - (b) any amount payable by him into the High Level Stop Loss Fund, and any repayment of an amount paid to him out of that Fund; and
  - (c) any amount payable by him under a quota share contract, irrespective of the purpose for which the contract was entered into.
- (2) Subject to subsection (3) below, each of the following, namely—
  - (a) any insurance money payable to him under a stop-loss insurance in respect of a loss in his underwriting business; and
  - (b) any amount payable to a member out of the High Level Stop Loss Fund in respect of such a loss,shall be treated as a trading receipt in computing the profits arising from that business for the year of assessment which corresponds to the underwriting year in which the loss arose.
- (3) Where, as respects the payment of any such insurance money or amount as is mentioned in subsection (2) above—
  - (a) the inspector is not notified of the payment at least 30 days before the time after which any assessment or further assessment of profits for the year of assessment is precluded by section 34 of the Management Act (ordinary time limit of six years), and
  - (b) the inspector is not entitled, after that time, to make any such assessment or further assessment by virtue of section 36 (fraudulent or negligent conduct) or 40(2) (assessment on personal representatives) of that Act,that subsection shall have effect in relation to that insurance money or amount as if it referred instead to the year of assessment which corresponds to the underwriting year in which the payment is made.

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- (4) In this section “quota share contract” means any contract between a member and another person which—
- (a) is made in accordance with the rules or practice of Lloyd's; and
  - (b) provides for that other person to take over any rights and liabilities of the member under any of the syndicates of which he is a member.

*Miscellaneous*

**179 Cessation: final year of assessment**

- (1) Subject to subsection (5) below, this section applies where a member ceases to carry on his underwriting business, whether by reason of death or otherwise.
- (2) Subject to subsection (3) below and to the provisions of any regulations made by the Board, the member's final year of assessment shall be that which corresponds to the underwriting year in which his deposit at Lloyd's is paid over to him or his personal representatives or assigns.
- (3) In any case where the member dies not later than the end of the underwriting year mentioned in subsection (2) above, his final year of assessment shall be that in which he dies.
- (4) For the purposes of section 171 above and all other purposes of the Income Tax Acts, any profits or losses arising to the member from his underwriting business which are not taken (by virtue of the provisions of this Chapter) to be profits or losses of an earlier year of assessment shall be taken to be profits or losses of his final year of assessment.
- (5) This section does not apply in any case where the member's deposit at Lloyd's is paid over to him or his personal representatives or assigns before 1st January 1993.

**180 Underwriting profits to be earned income**

- (1) In relation to any member, all profits arising to him from his underwriting business—
  - (a) shall be treated for the purposes of the Income Tax Acts as immediately derived from the carrying on by him of that business, and
  - (b) accordingly, shall constitute earned income for those purposes.
- (2) This section does not apply in relation to profits of the year 1992-93 or earlier years of assessment.

**181 Lloyd's underwriting agents**

In section 43 of the Finance Act 1989 (Schedule D: computation), subsections (6) and (7) (which extend certain time limits for persons permitted by the Council of Lloyd's to act as underwriting agents at Lloyd's) shall cease to have effect in relation to periods of account ending on or after 30th June 1993.

## *Supplemental*

### **182 Regulations**

- (1) The Board may by regulations provide—
  - (a) for the assessment and collection of tax charged in accordance with section 171 above (so far as not provided for by Schedule 19 to this Act);
  - (b) for making, in the event of any changes in the rules or practice of Lloyd’s, such amendments of this Chapter as appear to the Board to be expedient having regard to those changes;
  - (c) for modifying the application of this Chapter in cases where a syndicate continues after the end of its closing year or a member dies or otherwise ceases to carry on his underwriting business;
  - (d) for giving credit for foreign tax.
- (2) Subsection (3) below applies in the case of any provision of the Tax Acts, the Gains Tax Acts or the Management Act which imposes a time limit for making a claim or an election or an application.
- (3) The Board may by regulations provide that where the claim or election or application falls to be made by a member or his spouse (or both) the provision shall have effect as if it imposed such longer time limit as is specified in the regulations; and regulations under this subsection may make different provision for different provisions or different purposes.
- (4) Regulations under this Chapter may make provision with respect to any year or years of assessment; and the year (or any of the years) may be the year next but one preceding the year in which the regulations are made or any year following that earlier year.
- (5) Regulations made, or deemed to have been made, under any of the following enactments (regulations about Lloyd’s underwriters), namely—
  - (a) section 451(1) or (1A) of the Taxes Act 1988,
  - (b) section 92(5) of the Finance Act 1989, or
  - (c) section 209(4) of the Gains Tax Act,which were in force immediately before 6th April 1992 shall continue in force for the year 1992-93 and subsequent years of assessment notwithstanding the repeal of that enactment by this Act, and shall be deemed to have been made under this section.

### **183 Consequential amendments**

- (1) In section 20(2) of the Taxes Act 1988 (Schedule F), for the words “section 450” there shall be substituted the words “section 171 of the Finance Act 1993”.
- (2) In section 481(5)(f) of that Act (meaning of “relevant deposit”), for the words “section 457) of an underwriting member” there shall be substituted the words “section 184 of the Finance Act 1993) of an underwriting or former underwriting member”.
- (3) In section 627(5) (retirement annuities: Lloyd’s underwriters) and section 641(2) (carry-back of contributions) of that Act, for the words “underwriting member” there shall be substituted the words “underwriting or former underwriting member.”

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- (4) In section 710(14) of that Act (meaning of “business” and “premiums trust fund”), for the words “section 457” there shall be substituted the words “section 184 of the Finance Act 1993”.
- (5) In the following provisions (which relate to nominees, trustees etc.), namely—  
 section 720(3) of the Taxes Act 1988,  
 paragraph 18(1) of Schedule 4 to that Act,  
 paragraph 10(1) of Schedule 11 to the Finance Act 1989, and  
 paragraph 18(1) of Schedule 10 to the Finance Act 1990,  
 the words from “his special reserve fund” to the end shall be omitted.
- (6) In the following provisions (which relate to the death of a member), namely—  
 section 721(5) of the Taxes Act 1988,  
 paragraph 18(8) of Schedule 4 to that Act,  
 paragraph 10(6) of Schedule 11 to the Finance Act 1989, and  
 paragraph 18(6) of Schedule 10 to the Finance Act 1990,  
 the words from “a special reserve fund” to the end shall be omitted.
- (7) In section 206(2) of the Gains Tax Act (Lloyd’s underwriters), after the words “subsection (1) above” there shall be inserted the words “ and section 174(1) of the Finance Act 1993”.
- (8) In section 209 of that Act (interpretation, regulations about underwriters etc.)—  
 (a) in subsection (1), for the words “sections 450 to 456 of the Taxes Act” there shall be substituted the words “Chapter III of Part II of the Finance Act 1993” and for the words “sections 450 to 456”, in the second place where they occur, there shall be substituted the words “that Chapter”; and  
 (b) in subsection (6), the words “or (4)” shall be omitted.

## **184 Interpretation and commencement**

- (1) In this Chapter, unless the context otherwise requires—  
 “ancillary trust fund”, in relation to a member, does not include a premiums trust fund of his or his special reserve fund (if any) but, subject to that, means any trust fund required or authorised by the rules of Lloyd's, or required by a members' agent of his or the managing agent of a syndicate of which he is a member;  
 “closing year”—  
 (a) in relation to a year of assessment, means the year of assessment next but one following that year;  
 (b) in relation to an underwriting year, means the underwriting year next but one following that year; and  
 (c) in relation to a syndicate, means the closing year of the underwriting year for which it was formed;  
 “the Gains Tax Act” means the Taxation of Chargeable Gains Act 1992 and “the Gains Tax Acts” means that Act and any other enactments relating to capital gains tax;  
 “the High Level Stop Loss Fund” means the fund of that name which, under the rules of Lloyd's, has been established for the year 1993 and subsequent underwriting years;



“inspector” includes any officer of the Board;

“the Management Act” means the Taxes Management Act 1970;

“managing agent”, in relation to a syndicate and a year of assessment, means—

(a) the person registered as a managing agent at Lloyd's who was acting as such an agent for the syndicate at the end of the corresponding underwriting year, or

(b) such other person as may be determined in accordance with regulations made by the Board;

“member” means a member of Lloyd's who is or has been an underwriting member;

“members' agent”, in relation to a member of a syndicate and a year of assessment, means—

(a) the person registered as a members' agent at Lloyd's who was acting as such an agent for the member at the end of the corresponding underwriting year, or

(b) if two or more such persons were so acting and one of them was appointed by the member to be responsible for complying with the requirements of Part II of Schedule 19 to this Act in relation to all of the syndicates of which he is a member, that person, or

(c) if two or more such persons were so acting and none of them was so appointed, the person who was so acting for the member in his capacity as a member of the syndicate, or

(d) such other person as may be determined in accordance with regulations made by the Board;

“premiums trust fund” means such a trust fund as is referred to in section 83 of the Insurance Companies Act 1982;

“prescribed” means prescribed by regulations made by the Board;

“profits” includes gains;

“special reserve fund”, unless the contrary intention appears, means a special reserve fund set up under the arrangements mentioned in section 175(1) above;

“stop-loss insurance” means any insurance taken out by a member against losses in his underwriting business;

“syndicate” means a syndicate of underwriting members of Lloyd's formed for an underwriting year;

“underwriting business”, in relation to a member, means his underwriting business as a member of Lloyd's, whether carried on personally or through an underwriting agent, and does not include any other business carried on by him, and in particular, where he is himself an underwriting agent, does not include his business as such an agent;

“underwriting year” means the calendar year.

(2) For the purposes of this Chapter—

(a) an underwriting year and a year of assessment shall be deemed to correspond to each other if the underwriting year ends in the year of assessment;

(b) the profits or losses of a member's underwriting business include profits or losses arising to him from assets forming part of a premiums trust fund or an ancillary trust fund; and

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- (c) any charge made on a member by the agent of a syndicate of which he is a member, and any expense incurred on his behalf by the agent of such a syndicate, shall be treated as expenses arising directly from his membership of that syndicate.
- (3) Subject to any provision to the contrary, the provisions of this Chapter have effect for the year 1992-93 and subsequent years of assessment.