



# Finance Act 2002

## 2002 CHAPTER 23

### PART 3

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

### CHAPTER 2

#### OTHER PROVISIONS

#### *Computation of profits*

#### **64 Adjustment on change of basis**

- (1) The provisions of Schedule 22 to this Act have effect as to the adjustment or adjustments to be made for tax purposes where—
- (a) there is, from one period of account to the next of a trade, profession or vocation, a change of basis in computing profits for the purposes of Case I or II of Schedule D,
  - (b) the old basis accorded with the law or practice applicable in relation to the period of account before the change, and
  - (c) the new basis accords with the law and practice applicable in relation to the period of account after the change.

For the purposes of paragraphs (b) and (c) the practice applicable in any case means the accepted practice in cases of that description as to how profits should be computed for the purposes of Case I or II of Schedule D.

- (2) A “change of basis” means—
- (a) a relevant change of accounting approach, or
  - (b) a change in the tax adjustments applied.

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- (3) A “relevant change of accounting approach” means a change of accounting principle or practice that, in accordance with generally accepted accounting practice, gives rise to a prior period adjustment.
- (4) A “tax adjustment” means any such adjustment as is mentioned in section 42(1) of the Finance Act 1998 (c. 36) (adjustments required or authorised by law in computing profits for tax purposes).
- (5) A “change in the tax adjustments applied”—
  - (a) does not include a change made in order to comply with amending legislation not applicable to the previous period of account, but
  - (b) includes a change resulting from a change of view as to what is required or authorised by law, or as to whether any adjustment is so required or authorised.
- (6) The provisions of this section and Schedule 22 to this Act have effect in place of the provisions of section 44 of, and Schedule 6 to, the Finance Act 1998 (c. 36).

## **65 Postponement of change to mark to market in certain cases**

- (1) This section applies in relation to the computation in accordance with the provisions of Case I of Schedule D of the profits of the insurance business, other than life assurance business, of—
  - (a) an insurance company,
  - (b) a corporate member of Lloyd's, or
  - (c) a controlled foreign company.
- (2) For periods of account to which this section applies nothing in—
  - (a) section 70 of the Taxes Act 1988 (assessment to corporation tax on full amount of profits, etc), or
  - (b) section 42 of the Finance Act 1998 (c. 36) (computation of profits to be on basis giving true and fair view),
 prevents the company from computing the profits of that business on a realisation basis rather than a mark to market basis.

A “realisation basis” means not recognising a profit or loss on an asset until it is realised, and a “mark to market basis” means bringing assets into account in each period of account at a fair value.

- (3) Subject to subsection (4), this section applies in relation to any period of account that—
  - (a) began before 1st August 2001, and
  - (b) ends before 31st July 2002.
- (4) This section does not apply if—
  - (a) an earlier period of account beginning on or after 1st January 2001 ended with an accounting date different from that with which the previous period of account ended,
  - (b) the change of accounting date was notified—
    - (i) to the registrar of companies, or
    - (ii) in the case of a company established under the law of a country or territory outside the United Kingdom, to the corresponding authority of that country or territory,
 on or after 17th April 2002, and

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- (c) the purpose, or one of the purposes, for which the change was made was so that a subsequent period of account would be one to which section 64 above applies (computation of profits: adjustment on change of basis).

- (5) In this section—

- “controlled foreign company” has the same meaning as in Chapter 4 of Part 17 of the Taxes Act 1988; and

- “corporate member of Lloyd’s” means a corporate member as defined in section 230(1) of the Finance Act 1994 (c. 9).

## 66 Election to continue postponement of mark to market

- (1) Where section 65 (postponement of change to mark to market in certain cases) applies in relation to a period of account, the company may elect that it shall continue to apply in relation to subsequent periods of account as regards assets held by it on 1st January 2002.

Any such election must be made within twelve months after the end of the accounting period of the company current on that date.

- (2) An insurance company that carries on both long-term business and business other than long-term business may make an election under this section limited to assets held by the company otherwise than in the company’s long-term insurance fund.
- (3) For the purpose of determining whether an election under this section applies to an asset in a case where—
  - (a) assets are realised by the company in an accounting period beginning on or after 1st January 2002,
  - (b) the assets are of such a kind that the particular assets realised are not readily identifiable,
  - (c) the realisation does not exhaust the company’s holding, and
  - (d) some but not all of the company’s holding was acquired after 1st January 2002,assets realised shall be identified with assets acquired on the same basis as that used by the company for accounting purposes, unless the basis used by the company is “last in, first out” in which case assets realised shall be identified with assets acquired on or before 1st January 2002 in priority to assets acquired after that day.
- (4) Where a company has made an election under this section and—
  - (a) an asset in relation to which the election has effect is transferred to another company (“the transferee company”) in pursuance of a transfer scheme, and
  - (b) immediately after the transfer either—
    - (i) the transferee company is resident in the United Kingdom, or
    - (ii) the asset is held for the purposes of a business carried on by the transferee company in the United Kingdom through a branch or agency,this section applies as if the transferee company had made an election under this section in relation to that asset.

- (5) In this section—

- “insurance business” means business that consists of the effecting or carrying out of contracts of insurance and for the purposes of this definition “contract of insurance” has the meaning given in Article 3(1) of the Financial

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Services and Markets Act 2000 (Regulated Activities) Order 2001 ([S.I. 2001/544](#));

“insurance company”, “long-term business” and “long-term insurance fund” have the same meaning as in Chapter 1 of Part 12 of the Taxes Act 1988 (see section 431(2) of that Act);

“transfer scheme” means—

- (a) a scheme under section 105 of the Financial Services and Markets Act 2000 ([c. 8](#)), including an excluded scheme falling within Case 2, 3 or 4 of subsection (3) of that section, or
- (b) a qualifying overseas transfer scheme.

(6) A “qualifying overseas transfer scheme” means—

- (a) so much of a transfer of the whole or part of the business of an overseas life insurance company carried on through a branch or agency in the United Kingdom as takes place in accordance with an authorisation granted outside the United Kingdom for the purposes of Article 11 of the third life insurance directive, or
- (b) so much of a transfer of the whole or part of the business of an insurance company other than an overseas life insurance company as takes place in accordance with an authorisation granted outside the United Kingdom for the purposes of Article 12 of the third non-life insurance directive.

(7) In subsection (6)—

“overseas life insurance company” has the same meaning as in Chapter 2 of Part 12 of the Taxes Act 1988 (see section 431(2) of that Act);

“the third life insurance directive” means Council Directive [92/96/EEC](#) on the co-ordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directive [79/267/EEC](#) and [990/96/EEC](#); and

“the third non-life insurance directive” means Council Directive [92/49/EEC](#) on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives [73/239/EEC](#) and [88/357/EEC](#).

## **67 Mark to market: miscellaneous amendments**

(1) In section 473 of the Taxes Act 1988 (roll-over of securities held as circulating capital)

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- (a) in the opening words of subsection (2), omit “, if the securities were not such as are mentioned in subsection (1)(b) above”;
- (b) in subsection (2)(a), and in subsection (7), for “would result” substitute “results”; and
- (c) in subsection (2)(b) for “would be” substitute “is”.

(2) After subsection (2) of that section insert—

“(2A) This section does not apply to securities in respect of which unrealised profits or losses, calculated by reference to the fair value of the securities at the end of a period of account, are taken into account in the period of account in which the transaction mentioned in subsection (2) above occurs.

- (2B) Subsection (2A) above shall be disregarded in determining for the purposes of section 66 of the Finance Act 2002 (election to continue postponement of mark to market) whether an asset was held by a person on 1st January 2002.”.
- (3) In section 81 of the Finance Act 1999 (c. 16) (acquisitions disregarded under insurance companies concession), at the end add—
- “(13) If the relevant company changes from—
- (a) not recognising a profit or loss on an asset until it is realised, to
  - (b) bringing assets into account in each period of account at a fair value,
- then, in calculating the amount of any adjustment required under Schedule 22 to the Finance Act 2002 (calculation of adjustment on change of basis), the amount to be taken into account as the cost of the asset in relation to a period of account before the change is the cost of the previous acquisition.”.
- (4) The provisions of this section come into force as follows—
- (a) the amendments in subsections (1) and (2) apply in relation to periods of account ending on or after 1st August 2001;
  - (b) the amendment in subsection (3) applies wherever an adjustment falls to be made under Schedule 22 to the Finance Act 2002 (see Part 5 of that Schedule).

## **68 Expenditure involving crime**

- (1) In section 577A(1) of the Taxes Act 1988 (no deduction to be made for expenditure incurred in making a payment the making of which constitutes a criminal offence)—
- (a) after “incurred” insert “(a)”, and
  - (b) at the end insert “, or
- (b) in making a payment outside the United Kingdom where the making of a corresponding payment in any part of the United Kingdom would constitute a criminal offence there.”.
- (2) This section applies in relation to expenditure incurred on or after 1st April 2002.