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STATUTORY INSTRUMENTS

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**1995 No. 3238**

**INCOME TAX**

**The Insurance Companies (Overseas Life Assurance Business) (Tax Credit) Regulations 1995**

*Made* - - - - *12th December 1995*  
*Laid before the House of*  
*Commons* - - - - *12th December 1995*  
*Coming into force* - - *2nd January 1996*

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by sections 431E(2) and (3) and 441A(3) to (5) of the Income and Corporation Taxes Act 1988<sup>(1)</sup> and paragraph 58 of Schedule 8 to the Finance Act 1995<sup>(2)</sup>, hereby make the following Regulations:

Preliminary

**Citation, commencement and effect**

1. These Regulations may be cited as the Insurance Companies (Overseas Life Assurance Business) (Tax Credit) Regulations 1995, shall come into force on 2nd January 1996, and shall have effect in relation to accounting periods beginning on or after 1st November 1994.

**Interpretation**

2.—(1) In these Regulations unless the context otherwise requires—

“the Board” means the Commissioners of Inland Revenue;

“branch” includes agency;

“the Compliance Regulations” means the Insurance Companies (Overseas Life Assurance Business) (Compliance) Regulations 1995<sup>(3)</sup>;

“linked liabilities” means liabilities in respect of benefits to be determined by reference to the value of linked assets;

“policy holder” includes annuitant;

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(1) 1988 c. 1. Section 431E was inserted by paragraph 2 of Schedule 8 to the Finance Act 1995 (c. 4). Section 441A was inserted by paragraph 3 of Schedule 7 to the Finance Act 1990 (c. 29) and subsections (3) to (5) were substituted by paragraph 31 of Schedule 8 to the Finance Act 1995.

(2) 1995 c. 4.

(3) S.I. 1995/3237.

“relevant overseas policy holders” shall be construed in accordance with regulation 3;

“relevant tax credit” has the meaning given by regulation 8;

“tax credit territory” shall be construed in accordance with regulation 4.

(2) In regulations 9 to 12, in any case where the obligations under any policy or contract of the body that issued, entered into or effected it (“the original insurer”) are at any time the obligations of another body (“the transferee”) to whom there has been a transfer of the whole or any part of a business previously carried on by the original insurer, any reference to an insurance company (however expressed) shall, unless the context otherwise requires, include the transferee.

(3) In these Regulations any reference to a particular provision, without more, is a reference to that provision of the Income and Corporation Taxes Act 1988.

### **Meaning of relevant overseas policy holders**

**3.—**(1) For the purposes of these Regulations, and subject to paragraph (2) below, policy holders are relevant overseas policy holders of a company if—

(a) in relation to business other than reinsurance business, the company’s life assurance business with them is overseas life assurance business, or

(b) in relation to reinsurance business—

(i) the cedant company’s life assurance business with them is overseas life assurance business, or

(ii) the reinsurance of the cedant company’s business with them is overseas life assurance business.

(2) Policy holders shall not be relevant overseas policy holders where the business is reinsurance of business within sub-paragraph (i) or (ii) of section 431D(1)(b)(4).

### **Meaning of tax credit territory**

**4.** For the purposes of these Regulations a territory is a tax credit territory if an individual resident in the territory and receiving a distribution would be entitled, under arrangements having effect by virtue of section 788, to a tax credit in respect of a qualifying distribution made to him by a company resident in the United Kingdom.

## **Entitlement to tax credit**

### **Entitlement to tax credit**

**5.—**(1) Subject to paragraph (2) below, an insurance company shall be entitled, under section 441A(3), to an amount of tax credit in the case of a distribution in respect of an asset of the company’s overseas life assurance fund if any of the company’s relevant overseas policy holders is residing in a tax credit territory.

(2) An insurance company shall not be entitled, under section 441A(3), to an amount of tax credit as mentioned in paragraph (1) above to the extent that the company is entitled to that amount under any other provision of the Corporation Tax Acts.

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(4) Section 431D was inserted by paragraph 2 of Schedule 8 to the Finance Act 1995.

## Amount of tax credit

### Amount of tax credit

6. The amount of tax credit to which an insurance company is entitled by virtue of regulation 5 in respect of an asset shall be calculated by—

- (a) taking, for each tax credit territory in which any of its relevant overseas policy holders is residing, the appropriate fraction of the relevant tax credit, and
- (b) aggregating the amounts arrived at under paragraph (a) above.

### Appropriate fraction

7.—(1) In regulation 6 “the appropriate fraction” means—

- (a) in any case where the asset is linked to overseas life assurance business, the fraction specified in paragraph (2) below, and
- (b) in any case where the asset is not linked to overseas life assurance business, the fraction specified in paragraph (3) below.

(2) The fraction referred to in paragraph (1)(a) above is the fraction of which—

- (a) the numerator is the aggregate amount of the company’s linked liabilities which are liabilities in respect of—
  - (i) its relevant overseas policy holders within regulation 3(1)(a) residing in the tax credit territory, or
  - (ii) its cedant companies in respect of the company’s relevant overseas policy holders within regulation 3(1)(b) residing in the tax credit territory, and
- (b) the denominator is the aggregate amount of the company’s linked liabilities which are liabilities in respect of—
  - (i) all its relevant overseas policy holders within regulation 3(1)(a), or
  - (ii) its cedant companies in respect of all the company’s relevant overseas policy holders within regulation 3(1)(b).

(3) The fraction referred to in paragraph (1)(b) above is the fraction of which—

- (a) the numerator is the aggregate amount of the company’s liabilities, other than its linked liabilities, in respect of—
  - (i) its relevant overseas policy holders within regulation 3(1)(a) residing in the tax credit territory, or
  - (ii) its cedant companies in respect of the company’s relevant overseas policy holders within regulation 3(1)(b) residing in the tax credit territory, and
- (b) the denominator is the aggregate amount of the company’s liabilities, other than its linked liabilities, in respect of—
  - (i) all its relevant overseas policy holders within regulation 3(1)(a), or
  - (ii) its cedant companies in respect of all the company’s relevant overseas policy holders within regulation 3(1)(b).

(4) In its application to an overseas life insurance company this regulation shall be modified so that the word “liabilities” wherever it occurs is construed in accordance with the definition given in paragraph 6(2) of Schedule 19AC(5).

## **Relevant tax credit**

8. In regulation 6 the “relevant tax credit” means the amount of tax credit which would be paid under arrangements having effect by virtue of section 788, after taking into account any tax to be charged or deducted and any reduction in the amount received to be made by reference to the aggregate of the distribution and tax credit under those arrangements, if the distribution were received by an individual resident in the tax credit territory.

## **Territories in which policy holders residing**

### **General**

9. Any issue as to the territory in which a relevant overseas policy holder is residing for the purposes of these Regulations shall be determined in accordance with regulations 10 to 12.

### **Policies or contracts effected by a company resident in the United Kingdom outside the United Kingdom**

10.—(1) This regulation applies in circumstances where a policy or contract is effected by a company resident in the United Kingdom at or through a branch outside the United Kingdom.

(2) Subject to paragraph (3) below, the territory in which the policy holder was residing at the time the policy or contract was made shall be the territory in which the branch was situated.

(3) Where—

- (a) the policy or contract was made at or through a branch situated in a tax credit territory, and
- (b) at the time the policy or contract was made the company was in possession of information making it reasonable for the company to assume that the policy holder was residing in a non-qualifying territory at that time,

the territory in which the policy holder was residing at the time the policy was made shall be that non-qualifying territory.

(4) Where, pursuant to paragraph (2) or (3) above, a policy holder has been treated as residing in a territory at the time the policy or contract was made, the territory in which the policy holder is residing at any time thereafter shall, subject to paragraphs (5) and (6) below, be that same territory.

(5) Where—

- (a) the policy or contract was made at or through a branch situated in a tax credit territory, and
- (b) at any time after the policy or contract was made the company comes to be in possession of information making it reasonable for the company to assume that the policy holder was residing in a non-qualifying territory at the time the policy or contract was made or at any time thereafter,

the territory in which the policy holder is residing shall, from the relevant date, be that non-qualifying territory.

(6) If at any time after paragraph (5) above has applied, the company comes to be in possession of information making it reasonable for the company to assume that the policy holder, after residing in a non-qualifying territory, has begun residing in a tax credit territory, the territory in which the policy holder is residing shall, from the relevant date, be that tax credit territory.

**Policies or contracts effected either by a company resident in the United Kingdom otherwise than outside the United Kingdom or by an overseas life insurance company**

11.—(1) This regulation applies in circumstances where a policy or contract is effected either by a company resident in the United Kingdom otherwise than at or through a branch outside the United Kingdom, or by an overseas life insurance company.

(2) Subject to paragraph (6) below, in a case where the business is not reinsurance business, the territory in which the policy holder was residing at the time the policy or contract was made shall be the territory specified in the certificate prescribed in regulation 6(3) or, as the case may be, 7(4) of the Compliance Regulations.

(3) Subject to paragraphs (4) to (6) below, in a case where the business is reinsurance business, the territory in which the policy holder was residing at the time the policy or contract was made shall be a non-qualifying territory.

(4) Subject to paragraph (6) below, in a case where—

- (a) the business is reinsurance business, and
- (b) the relevant overseas policy holder is a policy holder with a cedant company whose business with him is overseas life assurance business,

the territory in which the policy holder was residing at the time the policy or contract was made shall be the territory which the cedant company notifies the company is the territory specified in the certificate prescribed in regulation 6(3) or, as the case may be, 7(4) of the Compliance Regulations.

(5) Subject to paragraph (6) below, in a case where—

- (a) the business is reinsurance business other than reinsurance business in a case falling within paragraph (4) above, and
- (b) the reinsurer notifies the company of the territory in which it reasonably believes the relevant overseas policy holder to reside,

the territory in which the policy holder was residing at the time the policy or contract was made shall be the territory notified.

(6) Where, at the time the policy or contract was made, the company was in possession of information making it reasonable for the company to assume that the policy holder was residing in a non-qualifying territory at that time, the territory in which the policy holder was residing at the time the policy or contract was made shall be that non-qualifying territory.

(7) Where, pursuant to any of paragraphs (2) to (6) above, a policy holder has been treated as residing in a territory at the time the policy or contract was made, the territory in which the policy holder is residing at any time thereafter shall, subject to paragraphs (8) and (9) below, be that same territory.

(8) Where, at any time after the policy or contract was made, the company comes to be in possession of information making it reasonable for the company to assume that the policy holder was residing in a non-qualifying territory at the time the policy was made or at any time thereafter, the territory in which the policy holder is residing shall, from the relevant date, be that non-qualifying territory.

(9) If at any time after paragraph (8) has applied, the company comes to be in possession of information making it reasonable for the company to assume that the policy holder, after residing in a non-qualifying territory, has begun residing in a tax credit territory, the territory in which the policy holder is residing shall, from the relevant date, be that tax credit territory.

(10) The company shall obtain the notification mentioned in paragraph (4) above within—

- (a) nine months following the end of the cedant company's accounting period in which the cedant company entered into the business with the relevant overseas policy holder, or
- (b) three months following the making of the reinsurance arrangement, or

(c) three months following the end of the company's accounting period in which the company first receives a distribution from an asset of its overseas life assurance fund to which a tax credit is attached,  
whichever is the last to occur.

### **Interpretation of regulations 10 and 11**

**12.**—(1) In regulations 10 and 11 a “non-qualifying territory” means—

- (a) the United Kingdom, or
- (b) a territory which is not a tax credit territory, or
- (c) a territory which is a tax credit territory, but where the amount of the relevant tax credit is nil.

(2) In each of the provisions to which this paragraph applies, “the relevant date” means the date from which it is reasonable for the company to assume that the policy holder is residing as mentioned in that provision; and this paragraph applies to regulations 10(5), 10(6), 11(8) and 11(9).

### **Keeping and inspection of records and provision of information**

#### **Records to be kept and transfers of records**

**13.**—(1) An insurance company (including any transferee) shall at all times keep sufficient records to enable the requirements of these Regulations to be satisfied.

(2) In any case where the obligations under any policy or contract of the body that issued, entered into or effected it (“the original insurer”) are at any time the obligations of another body (in this regulation referred to as the “transferee”) to whom there has been a transfer of the whole or any part of a business previously carried on by the original insurer, the original insurer shall deliver any relevant record (within the meaning given by the Compliance Regulations) to the transferee within the period of three months after the transfer.

(3) Paragraph (2) above has effect in relation to transfers on or after 1st January 1996.

#### **Information to be provided to the Board**

**14.** An officer of the Board authorised for the purposes of this regulation may by notice in writing require any insurance company to which these Regulations apply or any cedant company with which the insurance company has entered into a reinsurance arrangement, within such time as may be provided by the notice (not being less than 30 days), to furnish him with such information as he may reasonably require for the purposes of these Regulations.

#### **Inspection of records**

**15.**—(1) An officer of the Board authorised for the purposes of this regulation may by notice in writing require any insurance company to which these Regulations apply or any cedant company with which the insurance company has entered into a reinsurance arrangement, within such time as may be provided in the notice (not being less than 30 days), to make available for inspection by that officer in the United Kingdom, such books, documents and other records as are in the company's possession or under the company's control containing information relating to the territory in which any policy holder is, or has been, treated under these Regulations as residing.

(2) The officer to whom the books, documents and other records are made available shall be entitled to take copies, or make extracts from, any books, documents or records made available to him by virtue of paragraph (1) above.

12th December 1995

*S C T Matheson*  
*G H Bush*  
Two of the Commissioners of Inland Revenue

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for an insurance company to be entitled to a tax credit under section 231 of the Income and Corporation Taxes Act 1988 (“the 1988 Act”) where a distribution is made in respect of any asset of the company’s overseas life assurance fund. They also make provision as regards the amount of that tax credit, for determining the territories in which relevant overseas policy holders are residing and in relation to records and the provision of information.

Regulation 1 provides for citation, commencement and effect, and regulations 2 to 4 contain provisions relating to interpretation.

Regulation 5 provides for a company to be entitled, under section 441A(3) of the 1988 Act, to an amount of tax credit in respect of an asset of the company’s overseas life assurance fund if any of the company’s relevant overseas policy holders are residing in a tax credit territory. The company, however, is not entitled under section 441A(3) of the 1988 Act to such an amount if it is entitled to that amount under any other provision of the Corporation Tax Acts.

Regulation 6 provides for the amount of tax credit to be calculated by reference to the appropriate fraction of the relevant tax credit. The expressions “the appropriate fraction” and “relevant tax credit” are then defined in regulations 7 and 8 respectively.

Regulation 9 provides that any issue as to the territory in which a relevant overseas policy holder is residing shall be determined in accordance with regulations 10 and 11. Regulation 10 makes such provision in circumstances where a policy is effected by a company resident in the United Kingdom at or through a branch outside the United Kingdom; and regulation 11 makes such provision where the policy is effected either by a company resident in the United Kingdom otherwise than at or through a branch outside the United Kingdom, or by an overseas life insurance company. Regulation 12 contains provisions relating to the interpretation of regulations 10 and 11.

Regulation 13 provides for an insurance company to keep records and for records to be transferred in certain cases; and regulations 14 and 15 empower officers authorised by the Commissioners of Inland Revenue to obtain information and to inspect records.

These Regulations have effect in relation to accounting periods of insurance companies beginning on or after 1st November 1994. Authority for the retrospective effect of these Regulations is given by paragraph 58 of Schedule 8 to the Finance Act 1995.