
STATUTORY INSTRUMENTS

1996 No. 2991

The Insurance Companies (Reserves) (Tax) Regulations 1996

PART II

EQUALISATION RESERVES, ETC.

Overall Scope

Scope of this Part

- 4.—(1) Subject to paragraph (2), this Part of these Regulations applies to—
- (a) any equalisation reserve which an insurance company is required to maintain by virtue of section 34A regulations, and
 - (b) any reserve which is an equivalent reserve by virtue of subsection (2) of section 444BD.
- (2) This part of these Regulations does not apply to any credit insurance equalisation reserve.

Accounting on a non-annual basis

Non-annual accounts: tax returns prepared on an annual basis

- 5.—(1) This regulation applies in any case where an insurance company—
- (a) for the purpose of preparing the documents it is required to prepare for the purposes of section 17 of the 1982 Act, has applied a paragraph 52 method of accounting on a non-annual basis for any return period in respect of the whole or any part of its business, and
 - (b) for a related accounting period has submitted to an officer of the Board a return under section 11 of the Management Act⁽¹⁾ which is based on accounts prepared on an annual basis in respect of the whole of its business for that accounting period.
- (2) The operation of paragraphs (a) and (b) of subsection (2) of section 444BA shall be modified so as to provide that, for the purposes of the Tax Acts, the amounts which, in accordance with section 34A regulations, are transferred into or out of the equalisation reserve in respect of the company's business for the accounting period in question shall be the amounts which would have been transferred into or out of the equalisation reserve if the company had been required, by virtue of section 34A regulations, to maintain an equalisation reserve by reference to accounts prepared on an accident year basis.
- (3) For the purposes of paragraph (1) (b) accounts are prepared on an annual basis where they are prepared otherwise than in accordance with a paragraph 52 method of accounting on a non-annual basis.

⁽¹⁾ Section 11 was amended by section 82 of the Finance (No. 2) Act 1987 (c. 51) and section 91 of, and Part V of Schedule 19 to, the Finance Act 1990 (c. 29) and, prospectively, by section 181 of, and Part V(23) of Schedule 26 to, the Finance Act 1994 (c. 9).

(4) For the purposes of paragraph (2) accounts are prepared on an accident year basis where the accounts and statements required to be deposited with the Secretary of State pursuant to section 22 of the 1982 Act are prepared using Forms 21, 22 and 23 prescribed by the Insurance Companies (Accounts and Statements) Regulations 1996(2).

General provisions

Companies carrying on mutual business and business other than mutual business

6.—(1) This regulation applies in any case where an insurance company which, in accordance with section 34A regulations, is required to make transfers into or out of an equalisation reserve in respect of any business carried on by that company for any accounting period, is carrying on both mutual business and business other than mutual business for the whole or any part of that period.

(2) Paragraphs (a) and (b) of subsection (2) of section 444BA shall be modified so as to provide that, for the purposes of corporation tax, the amounts of the net premiums earned, the net premiums written and the net claims incurred which, in accordance with section 34A regulations, are used for the purpose of computing the amounts transferred into or out of the equalisation reserve or the amount of the maximum reserve in relation to the equalisation reserve for the accounting period in question, shall be restricted to the amounts attributed to business other than mutual business.

(3) For the purposes of corporation tax, the modification specified in paragraph (2) shall be made before subsections (4) to (6) of section 444BA are applied.

(4) In paragraph (2) “net premiums earned”, “net premiums written”, “net claims incurred” and “maximum reserve” have the meanings given by section 34A regulations.

EC companies

7.—(1) This regulation applies in any case where for any accounting period—

- (a) an equivalent reserve is maintained, otherwise than by virtue of section 34A regulations, by an EC company carrying on business in the United Kingdom through a branch, and
- (b) the three conditions specified in paragraphs (2) to (4) are satisfied.

(2) The first condition is that the branch in the United Kingdom has submitted, together with its return under section 11 of the Management Act, a balance sheet (“the branch balance sheet”) in respect of the trade of the branch.

(3) The second condition is that the branch balance sheet includes as a liability an amount in respect of an equalisation reserve which is equal to the amount which it would have been required to include as a liability in respect of an equalisation reserve maintained by virtue of section 34A regulations if the branch had been subject to such regulations.

(4) The third condition is that a balance sheet drawn up on the same day as the branch balance sheet for the purposes of the company’s statutory accounts (“the company balance sheet”), either—

- (a) includes as a liability an amount in respect of an equalisation reserve equal to or greater than the amount in respect of the equalisation reserve included in the branch balance sheet, or
- (b) in a case where the amount in respect of the equalisation reserve included in the branch balance sheet exceeds the amount in respect of the equalisation reserve included in the company balance sheet, shows the amount of the excess in the company balance sheet otherwise than as funds belonging to, or available for distribution either immediately or prospectively to, the proprietors of the company.

(5) For the purpose of calculating the amount of the excess referred to in paragraph (4), any amount in the company balance sheet denominated in a currency other than sterling is to be translated into sterling at the London closing exchange rate on the last day of the accounting period in question.

(6) Section 444BA shall have effect, subject to the modification specified in paragraph (7), in relation to the equalisation reserve included in the branch balance sheet as it has effect in relation to equalisation reserves maintained by virtue of section 34A regulations.

(7) Section 444BA shall be modified so as to provide in addition that in any case where, after the conditions specified in paragraphs (2) to (4) have been satisfied in an earlier accounting period, any of those conditions ceases to be satisfied in a later accounting period, then, for the purposes of the Tax Acts—

- (a) any balance which exists in the reserve at the end of the later accounting period shall be deemed to have been transferred out of the reserve immediately before the end of that accounting period;
- (b) that transfer shall be deemed to be a transfer in respect of that company's business for that accounting period; and
- (c) the amount of the reserve shall thereupon be deemed to be nil.

Certain insurance business carried on outside the United Kingdom

8.—(1) This regulation applies in any case where for any accounting period—

- (a) an equivalent reserve is maintained, otherwise than by virtue of section 34A regulations, in respect of any insurance business (within the meaning of the 1982 Act) which is carried on outside the United Kingdom by a company resident in the United Kingdom, and
- (b) the condition specified in paragraph (2) is satisfied.

(2) The condition is that the company prepares statutory accounts in which the balance sheet includes as a liability an amount in respect of an equalisation reserve which is equal to the amount which it would have been required to include as a liability in respect of an equalisation reserve maintained by virtue of section 34A regulations if the company had been subject to such regulations.

(3) For the purpose of calculating the amount of the liability referred to in paragraph (2), any amount in the company balance sheet denominated in a currency other than sterling is to be translated into sterling at the London closing exchange rate on the last day of the accounting period in question.

(4) Section 444BA shall have effect, subject to the modification specified in paragraph (5), in relation to the equalisation reserve included in the statutory accounts as it has effect in relation to equalisation reserves maintained by virtue of section 34A regulations.

(5) Section 444BA shall be modified so as to provide in addition that in any case where, after the condition specified in paragraph (2) has been satisfied in an earlier accounting period, that condition ceases to be satisfied in a later accounting period, then, for the purposes of the Tax Acts—

- (a) any balance which exists in the reserve at the end of the later accounting period shall be deemed to have been transferred out of the reserve immediately before the end of that accounting period;
- (b) that transfer shall be deemed to be a transfer in respect of that company's business for that accounting period; and
- (c) the amount of the reserve shall thereupon be deemed to be nil.

United Kingdom branches of companies not resident in the United Kingdom which maintain equalisation reserves by virtue of section 34A regulations

9.—(1) If the three conditions prescribed in paragraphs (2) to (4) below are satisfied, section 444BA shall have effect in the case of an equalisation reserve maintained by an insurance company which—

- (a) is not resident in the United Kingdom, and
- (b) carries on business in the United Kingdom through a branch.

(2) The first condition is that the branch in the United Kingdom has submitted, together with its return under section 11 of the Management Act, a balance sheet (“the branch balance sheet”) in respect of the trade of the branch.

(3) The second condition is that the branch balance sheet includes as a liability an amount in respect of an equalisation reserve maintained by virtue of section 34A regulations.

(4) The third condition is that a balance sheet drawn up on the same day as the branch balance sheet for the purposes of the company’s statutory accounts (“the company balance sheet”, either—

- (a) includes as a liability an amount in respect of an equalisation reserve equal to or greater than the amount in respect of the equalisation reserve included in the branch balance sheet, or
- (b) in a case where the amount in respect of the equalisation reserve included in the branch balance sheet exceeds the amount in respect of the equalisation reserve included in the company balance sheet, shows the amount of the excess in the company balance sheet otherwise than as funds belonging to, or available for distribution either immediately or prospectively to, the proprietors of the company.

(5) For the purpose of calculating the amount of the excess referred to in paragraph (4), any amount in the company balance sheet denominated in a currency other than sterling is to be translated into sterling at the London closing exchange rate on the last day of the accounting period in question.

(6) Where, after the conditions prescribed in paragraphs (2) to (4) have been satisfied in an earlier accounting period, any of those conditions ceases to be satisfied in a later accounting period, then, for the purposes of the Tax Acts—

- (a) any balance which exists in the reserve at the end of the later accounting period shall be deemed to have been transferred out of the reserve immediately before the end of that accounting period;
- (b) that transfer shall be deemed to be a transfer in respect of that company’s business for that accounting period; and
- (c) the amount of the reserve shall thereupon be deemed to be nil.

Double taxation relief

10.—(1) This regulation applies in any case where an insurance company which, in accordance with section 34A regulations, is required to make transfers into or out of an equalisation reserve in respect of any business carried on by that company for any accounting period, is carrying on any business by reference to which double taxation relief is afforded in respect of any income or gains.

(2) Paragraphs (a) and (b) of subsection (2) of section 444BA shall be modified so as—

- (a) to require that the amounts which, in accordance with section 34A regulations, are transferred into or out of the equalisation reserve in respect of the company’s business for the accounting period in question shall be apportioned amongst each branch outside the United Kingdom through which the company carries on business and business which is not carried on through branches outside the United Kingdom; and

(b) to provide that only those amounts which, pursuant to sub-paragraph (a), are apportioned to each branch outside the United Kingdom through which the company carries on business shall be brought into account for the purposes of computing the profits or losses by reference to which double taxation relief is afforded.

(3) The apportionment of each transfer into the equalisation reserve which is required by this regulation shall be made in accordance with the formula—

$$\frac{A \times B}{C}$$

A is the amount which, in accordance with section 34A regulations, is transferred into the equalisation reserve in respect of the company's business for the accounting period in question;

B is the amount of net premiums written by reference to which A is calculated that is attributable to business carried on through the branch outside the United Kingdom for the accounting period in question; and

C is the amount of net premiums written by reference to which A is calculated for the accounting period in question.

(4) In paragraph (3) "net premiums written" means gross premiums written net of reinsurance premiums payable under reinsurance ceded.

(5) The apportionment of each transfer out of the equalisation reserve which is required by this regulation shall be made in accordance with the formula—

$$\frac{D \times E}{F}$$

D is the amount which, in accordance with section 34A regulations, is transferred out of the equalisation reserve in respect of the company's business for the accounting period in question;

E is the amount of claims attributable to business carried on through the branch outside the United Kingdom that is to be taken into account in determining whether, by comparison with premiums, any transfer out of the equalisation reserve needs to be made for the period in question; and

F is the amount of claims to be taken into account in determining whether, by comparison with premiums, any transfer out of the equalisation reserve needs to be made for the period in question.

(6) Paragraph (7) applies where—

(a) an insurance company carries on business through one or more branches outside the United Kingdom,

(b) an amount is transferred into an equalisation reserve in respect of the business of that company for any accounting period, and

(c) the company has made an election for the purposes of subsection (4) of section 444BA so that there is an unrelieved transfer in relation to that accounting period.

(7) The company—

(a) shall apportion the amount transferred into the equalisation reserve in accordance with paragraph (3) without having regard to the existence of the unrelieved transfer, and

(b) may then set the amount of the unrelieved transfer, or any part of that amount, against the amount transferred into the equalisation reserve for that accounting period (and the action of the company under this sub-paragraph is called "the allocation" in paragraph (8)).

(8) The allocation may be made—

(a) in such amounts, and

- (b) in relation to such of the apportioned amounts transferred into the equalisation reserve pursuant to paragraph (7) (a) (and whether in relation to business carried on in the United Kingdom or in relation to business which the company carries on through a branch outside the United Kingdom),

as the company thinks fit.

(9) Paragraph (10) applies where—

- (a) an insurance company carries on business through one or more branches outside the United Kingdom,
- (b) an amount is transferred out of an equalisation reserve in respect of the business of that company for any accounting period, and
- (c) the accounting period is one to which any amount representing one or more unrelieved transfers has been carried forward under subsection (4) of section 444BA.

(10) The company—

- (a) shall ascertain the amount to which the rule mentioned in subsection (2) (b) of section 444BA applies by virtue of the operation of subsection (5) of that section (in this paragraph and in paragraph (11) referred to as “the ascertained amount”), and
- (b) shall then apportion the ascertained amount.

(11) Paragraph (5) shall apply for the purposes of the apportionment of the ascertained amount as it applies for the purposes of the apportionment of each transfer out of the equalisation reserve which is required by this regulation, with the modification that in the formula set out in that paragraph D shall be the ascertained amount.

(12) In paragraphs (6), (7) and (9) “unrelieved transfer” shall be construed in accordance with subsection (4) of section 444BA.