

**2003 No. 2714**

**INCOME TAX**

**The Non-resident Insurance Companies Regulations 2003**

*Made* - - - - *22nd October 2003*

*Laid before the House of Commons* *23rd October 2003*

*Coming into force* - - *13th November 2003*

The Commissioners of Inland Revenue, in exercise of the powers conferred upon them by section 11AA(5) of the Income and Corporation Taxes Act 1988(a) and section 149(6) of the Finance Act 2003(b) hereby make the following Regulations:

1. These Regulations may be cited as the Non-resident Insurance Companies Regulations 2003, shall come into force on 13th November 2003, and have effect in relation to accounting periods of non-resident insurance companies beginning on or after 1st January 2003.

2. In these Regulations —

“non-resident insurance company” means an insurance company that is not resident in the United Kingdom; and for this purpose “insurance company” has the meaning given by section 431(2) of the Income and Corporation Taxes Act 1988(c).

3.—(1) In applying subsection (2) of section 11AA of the Income and Corporation Taxes Act 1988 in relation to a non-resident insurance company, it shall be assumed that the permanent establishment has assets such that its free assets would be not less than they would be in the circumstances specified in that subsection.

(2) “Free assets” means the amount by which —

- (a) the value of the assets of the permanent establishment(d), exceeds
- (b) the aggregate of the permanent establishment’s loan capital and technical provisions;

and for this purpose, the reinsurers’ share of technical provisions is not to be included in determining the assets of the permanent establishment.

(3) “Value” means the amount that, at the time at which the value falls to be determined, the non-resident insurance company would obtain from an independent person for the transfer of all the company’s rights in respect of the asset.

(4) “Technical provision” means each of the following —

- (a) provision for unearned premiums;
- (b) long term business provision;

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(a) 1988 c.1. Section 11AA was inserted by section 149(2) of the Finance Act 2003 (c.14) with effect in relation to accounting periods beginning on or after 1st January 2003.

(b) 2003 c.14.

(c) 1988 c.1. The definition of “insurance company” was amended by articles 13 and 26(1), (3), and (9) of S.I. 2001/3629 with effect for periods of account ending on or after 1st December 2001.

(d) The definition of “permanent establishment” is inserted into section 832(1) of the Income and Corporation Taxes Act 1988 by section 148(6) of the Finance Act 2003.

- (c) claims outstanding;
- (d) provision for bonuses and rebates;
- (e) provision for unexpired risks;
- (f) technical provisions for linked liabilities;
- (g) deposits received from reinsurers;

and in the case of the items listed in sub-paragraphs (a) to (f), the amount to be brought into account is the amount by which the gross amount exceeds the reinsurance amount.

In this paragraph expressions also used in Schedule 9A to the Companies Act 1985(a) have the same meaning as in that Schedule.

4.—(1) In accordance with the separate enterprise principle, profits from assets attributable, by virtue of regulation 3, to the permanent establishment of a non-resident insurance company are attributed to that establishment.

(2) “The separate enterprise principle” means the principle in subsection (2) of section 11AA of the Income and Corporation Taxes Act 1988 (read with subsection (3) of that section).

*Nick Montagu  
Helen Ghosh*

22nd October 2003

Two of the Commissioners of Inland Revenue

#### **EXPLANATORY NOTE**

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

These Regulations modify the effect of section 11AA of the Income and Corporation Taxes Act 1988 (c. 1) in respect of non-resident insurance companies. Section 11AA, inserted by section 149(2) of the Finance Act 2003 (c. 14), provides for the determination for the purposes of corporation tax of the amount of profits attributable to a permanent establishment in the United Kingdom of a company that is not resident in the United Kingdom. Regulation 3 is intended to secure that in determining the amount of profits of the permanent establishment it is assumed that the permanent establishment has free assets of an amount not less than it would have in the circumstances described in section 11AA(2), namely if the permanent establishment were a distinct and separate enterprise, engaged in the same or similar activities under the same or similar conditions, and dealing wholly independently with the non-resident company of which it is a permanent establishment.

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(a) 1985 c.6. This Schedule (originally part of Schedule 9) was formed by regulation 5(1) of S.I. 1991/2705, and substituted by regulation 4 of, and Schedule 1 to, S.I. 1993/3246. It was subsequently amended by S.I. 1996/189, S.I. 1996/946, S.I. 1997/220, S.I. 1997/2704, S.I. 2001/3649, and section 3(1) and (2) of the Insurance Companies (Reserves) Act 1995.

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