
STATUTORY INSTRUMENTS

2003 No. 2862

INCOME TAX

**The General Insurance Reserves
(Tax) (Amendment) Regulations 2003**

Made - - - - *10th November 2003*
Laid before the House of
Commons - - - - *10th November 2003*
Coming into force - - *5th December 2003*

The Commissioners of Inland Revenue, in exercise of the powers conferred upon them by section 107 of the Finance Act 2000⁽¹⁾, hereby make the following Regulations:

Citation, commencement and effect

1. These Regulations may be cited as the General Insurance Reserves (Tax) (Amendment) Regulations 2003, shall come into force on 5th December 2003 and shall have effect for periods of account ending on or after that date.

Interpretation

2. In these Regulations “the principal Regulations” means the General Insurance Reserves (Tax) Regulations 2001⁽²⁾.

Amendment of the principal Regulations

3. The principal Regulations shall be amended as follows.

4.—(1) Amend regulation 2 (interpretation) as follows.

(2) In paragraph (1) after the definition of “controlled foreign company” insert—

““corporate general insurer” means a general insurer which is a company;”.

(3) At the end add—

“(3) In these Regulations a reference to a numbered Rule is a reference to the Rule in regulation 3 bearing that number.”.

(1) 2000 c. 17. Section 107 was amended by articles 105 and 106 of S.I. 2001/3629.

(2) S.I. 2001/1757, amended by article 193 of S.I. 2001/3629 and paragraph 78 of the Schedule to S.I. 2003/2096.

5.—(1) Amend regulation 3 (recalculation of technical provisions for the purposes of section 107) as follows.

(2) In paragraph (2), after the definition of “the recalculation date” insert—

““relevant transaction” means any disposal or acquisition (in whole or in part) of the rights or liabilities of—

- (a) a corporate general insurer under a contract of insurance; or
- (b) a reinsurer under a contract of reinsurance;”.

(3) In paragraph (3)—

- (a) omit sub-paragraph (b) and the word “and” preceding it;
- (b) in Rule 2.1—

(i) for paragraph (a) substitute—

“(a) where the earlier period of account is the general insurer’s first period of account which began on or after 1st January 2000, were provisions made and taken into account for that period, and; and”

(ii) in paragraph (b) for “was provision” substitute “were provisions”;

(c) in Rule 3.1 for “or qualifying contract” substitute “, qualifying contract or relevant transaction”;

(d) for Rule 4.1 substitute—

“4.1. This Rule applies where either Rule 4.1A or 4.1B is satisfied.

4.1A. This Rule is satisfied if—

(a) on or after 1st January 2004 a corporate general insurer enters into a qualifying contract, other than a reinsurance to close contract, with another person (“the reinsurer”) and—

- (i) the corporate general insurer and the reinsurer are connected companies; or
- (ii) the qualifying contract is, or forms part of, a transaction, as a result of which a company connected with the corporate general insurer (“the connected company”) directly or indirectly agrees to meet a liability of the corporate general insurer or any further liability representing that liability, through any number of such agreements (“the replacement agreements”); and

(b) Rule 4.1C applies.

4.1B. This Rule is satisfied if—

(a) on or after 1st January 2004, as a result of—

- (i) a relevant transaction between a corporate general insurer and a company with which it is connected (“a connected company”), or
- (ii) a series of transactions having the same effect as a relevant transaction between a corporate general insurer and a connected company,

the connected company directly or indirectly replaces the corporate general insurer as a party to a contract of insurance including by way of novation; and

(b) Rule 4.1C applies.

4.1C. This Rule applies if the person assuming the liabilities—

- (a) is not within the charge to corporation tax in respect of income arising from the qualifying contract or the relevant replacement agreement, assuming there were such income; and
- (b) is not a controlled foreign company in relation to which—
 - (i) an apportionment under section 747(3) falls to be made regarding, or
 - (ii) section 748(1)(a) applies to,the accounting period in which the qualifying contract is made.

This is subject to the following qualification.

This Rule applies only to the extent that the qualifying contract reinsures liabilities represented in technical provisions which the corporate general insurer has previously taken into account.

In this Rule “the person assuming the liabilities” means, as the case requires, the reinsurer referred to in Rule 4.1A(a) or the connected company referred to in Rule 4.1A(a)(ii).”;

- (e) in Rule 4.2—
 - (i) after “qualifying contract” insert “or the relevant transaction”; and
 - (ii) in paragraph (a) after “under that contract” insert “or that transaction”;
- (f) in Rule 5.4 for “where a foreign currency discount rate is to apply (see regulation 5)” substitute “where the calculations under these Regulations are carried out in Australian dollars, Canadian dollars, euro, Japanese yen, Swiss francs or United States dollars (“the relevant foreign currency”)”;
- (g) in Rule 8.1—
 - (i) in paragraph (b) after “in relation to” insert “the same earlier period of account”; and omit sub-paragraphs (i) and (ii);
 - (ii) in the words following paragraph (b) after “the adjustment is a deficiency, that is” add “subject to Rule 8A”;
- (h) after Rule 8 insert—
 - “**8A.1.** This Rule applies if, in respect of the provisions made for the earlier period of account—
 - (a) an election has been made under section 107(4) for the earlier period of account in question, and
 - (b) the result of applying Rule 8 is a deficiency.
 - “**8A.2.** Where Rule 8A.1 applies, apply Rules 6 to 8 but, in carrying out the calculation made at the end of the later period of account, add to the amount of the original provisions—
 - (a) the amount of any losses set off, under section 393 of the Taxes Act (losses other than terminal losses of a trade)⁽³⁾ against the trading income of the company’s general insurance business for the period of account for which an election under section 107(4) was made in respect of the provisions for the earlier period of account; and
 - (b) any amount which remains to be set off against the profits of the company’s general insurance business for the period of account for which an election under

(3) Section 393 was amended by section 99 of the Finance Act 1990 and section 73 of, and paragraph 8 of Schedule 15, and Part V of Schedule 19 to the Finance Act 1991.

section 107(4) was made in respect of the provisions for the earlier period of account under—

- (i) section 393A of the Taxes Act (trading losses: set off against the profits of the same or an earlier accounting period)(4);
- (ii) Chapter 4 of Part 10 of the Taxes Act (group relief);
- (iii) section 83 of, and Schedule 8 to the Finance Act 1996 (non-trading deficit on loan relationships)(5);
- (iv) paragraph 35 of Schedule 29 to the Finance Act 2002 (non-trading losses on intangible fixed assets); and
- (v) other charges on the income of the company;

after treating any other profits of the general insurer for the earlier period as being reduced in priority to the profits of its general insurance business.

This is subject to the following qualifications.

8A.3. The qualifications referred to in Rule 8A.2 are that—

- (a) the total amount added in accordance with it to the provisions for all earlier periods of account taken together shall not exceed the sum of the amounts found under paragraphs (a) and (b) of that Rule; and
- (b) the adjustment made under that Rule shall not exceed the amount of the technical provisions for the earlier period of account.

8A.4. Compare the result of applying Rule 8A.2 with that found before applying it.

If both the amounts are deficiencies, for the purposes only of Rule 9 the smaller deficiency is the amount referred to in section 107(3).

If the result of applying Rule 8A.2 is an excess—

- (a) it is disregarded for the purposes of section 107(2); and
- (b) the deficiency produced by Rule 8 is disregarded for the purposes of section 107(3).

8A.5. If any amount mentioned in Rule 8A.2 is amended in accordance with any provision of the Taxes Act, the adjustment made under that Rule shall be amended accordingly.”;

(i) in Rule 9.1—

- (i) for “at the rate specified” substitute “at the rate or rates specified in respect of the period mentioned below”;
- (ii) for “therefrom” substitute “from the amount of such interest”; and
- (iii) for the words from “until” to “as if they were accounting periods” substitute “until the stop date”;

(j) after Rule 9.1 insert—

“**9.1A.** Interest shall be calculated on the amount of the result of Rule 8 or 8A (as the case requires) in respect of the period—

- (a) beginning with the stop date, and

(4) Section 393A was inserted by section 73(1) of the Finance Act 1991 and amended by paragraph 26 of Schedule 20 to the Finance Act 1996, section 39(1) of the Finance (No. 2) Act 1997 and paragraph 32 of Schedule 2, and the relevant entry in Schedule 4, to the Capital Allowances Act 2001.

(5) Section 83 was substituted by section 82 of the Finance Act 1998, and amended by paragraph 3 of Schedule 25, and Part 3(12) of Schedule 40, to the Finance Act 2002. Schedule 8 was amended by section 40(2) of the Finance (No. 2) Act 1997, paragraph 64 of Schedule 5 to the Finance Act 1998 and paragraphs 17 to 19 of Schedule 25 to the Finance Act 2002.

- (b) ending with the date when corporation tax for the later period of account becomes due and payable at the rate specified in regulation 3ZA(1) of the Taxes (Interest Rate) Regulations 1989(6),

but as if there were deducted from the amount of such interest corporation tax at the rate fixed for companies generally (within the meaning of section 13(1) of the Taxes Act) for the later period of account.

9.1B. In Rules 9.1 and 9.1A the “stop date” is the earlier of—

- (a) the date when corporation tax for the later period of account becomes due and payable; and
- (b) the tenth anniversary of the date on which corporation tax for the earlier period of account became due and payable.

Subsection (1) of section 59D of the Taxes Management Act 1970 (day when corporation tax due and payable)(7) applies for the purposes of this Rule and Rules 9.1 and 9.1A as it applies for the purposes of that section but as if the references in that subsection to an accounting period were to a period of account.”; and

- (k) in Rule 9.3 for “sections 92 to 94” substitute “92 to 93A(8)”.

6.—(1) Amend regulation 4 (provisions supplementing regulation 3) as follows.

(2) In paragraph (1)(9) for sub-paragraph (b) substitute—

- “(ab) a scheme which would be an insurance business transfer scheme but for section 105(1)(b) of the Financial Services and Markets Act 2000;
- (b) a transfer in accordance with an authorisation granted outside the United Kingdom for the purposes of Article 12 of Council Directive 92/49/EC(10) on the co-ordination of the laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/329/EEC and 88/357/EEC,”.

(3) After paragraph (1) insert—

“(1A) Paragraph (2) also applies where, as a result of—

- (a) a relevant transaction effected after 5th December 2003 between a corporate general insurer and another company—
 - (i) with which it is connected, and
 - (ii) which is within the charge to corporation tax in respect of that transaction, or
- (b) a series of transactions having the same effect as a relevant transaction effected after 5th December 2003 between two companies which—
 - (i) have been connected with each other at any time in the course of that series of transactions, and
 - (ii) are within the charge to corporation tax in respect of the relevant transaction,

(6) S.I. 1989/1297: regulation 3ZA was inserted by regulation 6 of S.I. 1998/3176 and amended by regulation 2 of S.I. 2000/893.

(7) Section 59D was substituted by paragraph 29(2) of Schedule 19 to the Finance Act 1998 and amended by section 40(3) of the Finance Act 2002.

(8) Sections 92 to 94 were substituted by section 105 of the Finance Act 2000. Section 92 was amended by paragraph 88 of Schedule 2 to the Capital Allowances Act 2001 (“CAA”) and paragraph 2 of Schedule 24 to the Finance Act 2002 (“FA 2002”). Section 93 was amended by paragraph 89 of Schedule 2 to CAA, section 103(4)(b) of, and paragraph 3 of Schedule 24 to, FA 2002 and paragraph 3 of Schedule 27 to the Finance Act 2003. Section 93A was amended by paragraph 3 of Schedule 27 to Finance Act 2003.

(9) Paragraph (1) was amended by article 193(1) of S.I. 2001/3629.

(10) O.J. L 228, 11/8/1992, p. 1, amended by Council Directives 95/26, 2000/64 and 2002/67.

one of those companies directly or indirectly replaces the other as the insurer under a contract of insurance, or as the reinsurer under a contract of reinsurance, including (in either case) by way of novation.”.

(4) In paragraph (2)—

- (a) at the end of sub-paragraph (a) omit “and”;
- (b) after sub-paragraph (a) insert—

“(ab) an election made under section 107(4) by the transferor had been made by the transferee; and.”

(5) After paragraph (2) insert—

“(2A) In paragraph (2)(a) “technical provisions made and taken into account by the transferor” means, in relation to a period of account in which a transfer of business occurs, the technical provisions which would have been made and taken into account had the transferor’s period of account ended immediately before the transfer.

The time at which the technical provisions are treated as made and taken into account by this paragraph shall be treated as the end of a period of account for the purposes of regulation 3(3) (and an election under section 107(4) may accordingly be made in respect of that period).”.

(6) In paragraph (3)—

- (a) for “paragraph (c) of Rule 4.1” substitute “Rule 4.1C”;
- (b) for “paragraph (b)(i) of Rule 4.1” substitute “Rule 4.1A(a)(i)”;
- (c) for “paragraph (b)(ii) thereof” substitute “Rule 4.1A(a)(ii)”;
- (d) for “the general insurer (as defined in that Rule)” substitute “the corporate general insurer”;
- (e) in sub-paragraphs (a) and (c) before “general insurer” insert “corporate”; and
- (f) in sub-paragraph (c) for “Rules 1 to 9” substitute “Rules 1 to 10”.

7.—(1) For regulation 5 (currency elections) substitute—

“Accounting in foreign currencies and relevant discount rates

5.—(1) In respect of that part of a general insurer’s business to which subsection (1) of section 747A of the Taxes Act(11) applies, any calculation required under these Regulations shall be made in the same currency as that required to be used, for the purposes of Chapter 4 of Part 17 of the Taxes Act, by subsection (2) of that section.

(2) In respect of that part of a general insurer’s business to which section 93A of the Finance Act 1993(12) applies, so much of any calculation required under these Regulations as relates to business in respect of which financial statements and records are prepared in the relevant foreign currency (within the meaning of that section) shall be made in that currency.

(3) In respect of that part of a general insurer’s business to which section 93 of the Finance Act 1993(13) applies—

(11) Section 747A was inserted by paragraph 2 of Schedule 25 to the Finance Act 1995 (c. 4). It was amended by paragraph 1 of Schedule 36, and partly repealed by the relevant entry in Part V of Schedule 41, to the Finance Act 1996 (c. 8), and further amended by paragraph 2 of Schedule 17 to the Finance Act 1998 (c. 36) and paragraph 19 of Schedule 23 to the Finance Act 2002 (c. 23).

(12) Section 93A was inserted by paragraphs 1 and 4 of Schedule 24 to the Finance Act 2002.

(13) 1993 c. 34. Section 93 was substituted by section 105 of the Finance Act 2000 (c. 17), amended by paragraph 89 of Schedule 2 to the Capital Allowances Act 2001 (c. 2) and paragraphs 1 and 3 of Schedule 24 to the Finance Act 2002 and partly repealed by Part 3(11) of Schedule 40 to the Act of 2002.

(a) any calculation required under these Regulations shall be made in the relevant foreign currency (within the meaning of that section); and

(b) the exchange rate to be used for determining the sterling equivalent of the amount of the receipt or expense found under Rule 9.3 is the London closing exchange rate.

(4) In respect of so much of general insurer's business as does not fall within the previous provisions of this regulation section 94AA of the Finance Act 1993 shall apply to the calculation of an excess or deficiency under regulation 3 as it applies to a computation under section 92(1) of that Act.

(5) If the foreign currency used in the calculations under paragraphs (1) to (3) is one of the currencies mentioned in paragraph (b) of Rule 5.4, the discount rate to be applied to those calculations shall be found in accordance with the formula in that paragraph, and in any other case shall be found in accordance with the formula in paragraph (a) of Rule 5.4.”.

This substitution is subject to the qualification in paragraph (2).

(2) Notwithstanding the substitution made by paragraph (1)—

(a) an election may be made before 31st December 2003 under regulation 5(1) as it stood immediately before the substitution; and

(b) if such an election is made (whether before or after the coming into force of these Regulations) the currency chosen under regulation 5(5) of the principal Regulations as it stood before the substitution may continue to be used as it might have been had the substitution not occurred.

8.—(1) Amend regulation 6 (excluded descriptions of general insurer)(**14**) as follows.

(2) Renumber the existing regulation 6 as paragraph (1) of that regulation.

(3) In paragraph (1) so created—

(a) in sub-paragraph (a) for “has gone into” substitute “is in”;

(b) in sub-paragraph (c) for “has been” substitute “is”;

(c) in sub-paragraph (d) for “has taken effect” substitute “is in force”;

(d) at the end add—

“This is subject to the following qualification.”.

(4) After paragraph (1) add—

“(2) A general insurer is not excluded from the operation of section 107 by virtue of paragraph (1)(c) or (d) unless—

(a) it is insolvent at the time the provisional liquidator is appointed or the relevant arrangement or compromise comes into force; or

(b) in a case falling within paragraph (1)(d), it would be insolvent but for the relevant arrangement or compromise coming into force.”.

9.—(1) Amend regulation 7 (“technical provisions” in relation to an underwriting member) as follows.

(2) In paragraph (2)—

(a) in sub-paragraph (a) for “(6)” substitute “(5)”; and

(b) in sub-paragraph (b) omit “, (6)”.

(3) In paragraph (4)(b), within the paragraph (b) substituted for Rule 2.1(b), for “was provision” substitute “were provisions”.

(14) Regulation 6 was amended by paragraph 78 of the Schedule to [S.I. 2003/2096](#).

(4) Omit paragraph (6).

(5) In paragraph (10) for “regulation 4(2)(a) and (b)” substitute “sub-paragraphs (a), (ab) and (b) of regulation 4(2)”.

10.—(1) Amend regulation 8 (elections under section 107(4) of the Finance Act 2000 or paragraph 4(2) of Schedule 24 to the Taxes Act) as follows.

(2) For paragraph (1) substitute—

“(1) An election by a general insurer for the purposes of section 107(4) or for the purposes of paragraph 4(2) of Schedule 24 to the Taxes Act⁽¹⁵⁾ may be made or withdrawn at any time up to whichever is the last of the following dates—

- (a) the first anniversary of the filing date for the company tax return of the company making the election for the period of account in respect of which the election is made;
- (b) if notice of enquiry is given into that return, 30 days after the enquiry is completed;
- (c) if, after such an enquiry, the Board amend the return under paragraph 34(2) of Schedule 18 to the Finance Act 1998, 30 days after the notice of the amendment is issued; and
- (d) if an appeal is brought against such an amendment, 30 days after the date on which the appeal is finally determined.

(1A) Paragraph (1) applies to an underwriting member other than a body corporate with the substitution for paragraphs (a) to (c) of—

- “(a) the first anniversary of 31st January next following the end of the year of assessment in which falls the end of the period of account in respect of which the election is made;
- (b) if notice of enquiry is given into the underwriting member’s tax return for that year of assessment, 30 days after the enquiry is completed;
- (c) if after such an enquiry the Board amend the return under section 28A of the Taxes Management Act 1970⁽¹⁶⁾, 30 days after the amendment of the return;”.

(3) In paragraph (2) for “paragraph (1)” substitute “paragraph (1)(a)”.

(4) At the end add—

“(4) An election under section 107(4) by a controlled foreign company may be communicated, on its behalf, by the person or persons resident in the United Kingdom by whom it is controlled to the Board.

(5) An election under section 107(4) shall be made in writing and shall specify—

- (a) the period of account in respect of which the election is made;
- (b) the earlier period or periods of account to which the technical provisions in question relate;
- (c) the amount of technical provisions being disclaimed in respect of each such period; and
- (d) the currency in which the technical provisions being disclaimed are expressed.”.

11. After regulation 9 add—

⁽¹⁵⁾ Paragraph 4(2) was amended by paragraph 3 of Schedule 36 to the Finance Act 1996 and paragraph 19 of Schedule 17 to the Finance Act 1998.

⁽¹⁶⁾ 1970 c. 9. Section 28A in its current form was substituted by paragraph 8 of Schedule 29 to the Finance Act 2001.

“Modification: companies subject to these Regulations on or after 5th December 2003

10.—(1) Paragraph (2) applies to a company if any of the following Cases applies.

Case 1

The company is one to which these Regulations first apply on or after 5th December 2003 by reason of its becoming—

- (a) a controlled foreign company on or after that date; or
- (b) subject to corporation tax for the first time on or after that date.

Case 2

The company, already being subject to corporation tax in respect of its general insurance business, is charged to tax under Case I of Schedule D in respect of that business for the first time for a period of account beginning on or after 5th December 2003.

Case 3

The company is a controlled foreign company and the first period of account in respect of which—

- (a) an apportionment falls to be made under section 747(3), or
- (b) section 748(1)(a) applies,

is a period of account ending on or after 5th December 2003.

Case 4

The company is one to which these Regulations apply on 5th December 2003 by reason only of the amendments made by regulation 8 of the General Insurance Reserves (Tax) (Amendment) Regulations 2003 to regulation 6 of these Regulations.

(2) In the case of a company to which this paragraph applies, regulations 2 to 9 of these Regulations shall apply as if references to the first earlier period of account were to the period of account preceding that during which the company first becomes subject to these Regulations and references to original technical provisions shall be construed accordingly.

(3) If paragraph (2) applies, an election may be made under section 107(4) in respect of the original technical provisions of the period of account preceding that during which the company in question first becomes subject to these Regulations.”.

10th November 2003

Nick Montagu
Dave Hartnett
Two of the Commissioners of Inland Revenue

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the General Insurance Reserves (Tax) Regulations 2001 ([S.I 2001/1757](#): “the principal Regulations”). The principal effect is to clarify how liabilities, in respect of which technical provision may be made for tax purposes, are to be treated.

Regulation 1 provides for the citation, commencement and effect of the Regulations and regulation 2 for interpretation.

Regulation 3 introduces the amendments to the principal Regulations.

Regulation 4 amends regulation 2 of the principal Regulations, inserting a definition of “corporate general insurer” and a provision dealing with the construction of references to “Rules”.

Regulation 5 amends regulation 3 of the principal Regulations, which contains the main rules on computation of the amounts of reserves under section 107 of the Finance Act 2000 (“section 107”).

Regulation 6 amends regulation 4 of the principal Regulations extending the circumstances in which regulation 4(2) applies. It amends paragraph (1) so as to substitute new sub-paragraphs (ab) and (b) for the existing (b), and inserts a new paragraph (1A). The effect of the amendments is to apply paragraph (2) of the regulation to a transfer—

- (a) which would constitute an insurance business transfer scheme if the transferee were within the European Union;
- (b) which is effected in accordance with an authorisation granted outside the United Kingdom for the purposes of article 12 of Council Directive [92/49/EC](#), or
- (c) in which the transferor and transferee are connected.

Regulation 6 also adds a new paragraph (2A) to clarify the operation of the Regulations in respect of technical provisions made and taken into account where there is a transfer of business.

Regulation 7(1) substitutes a new regulation 5 of the principal Regulations specifying rules to determine which currencies are to be used in calculations required under those Regulations. Paragraph (2) makes transitional provision in respect of the substitution.

Regulation 8 amends regulation 6 of the principal Regulations, restructuring the existing text and adding a new paragraph (2). The effect is that a company is only excluded by virtue of sub-paragraphs (c) and (d) of paragraph (1) if, at the time a provisional liquidator is appointed the company is insolvent or, in the case of a scheme or arrangement falling within sub-paragraph (d) the company would be insolvent but for the scheme or arrangement.

Regulation 9 amends regulation 7 of the principal Regulations, which contains adaptations of regulations 3 to 5 in relation to underwriting members, in consequence of the other amendments made by these Regulations.

Regulation 10 amends regulation 8 of the principal Regulations to make it clear that an election by a controlled foreign company under section 107 may be made on its behalf by the UK resident by whom it is controlled. It also specifies the content of an election under section 107(4).

Regulation 11 adds a new regulation 10 to the principal Regulations. The new regulation modifies the concept of “the first earlier period of account” for the purposes of regulations 2 to 9 of the principal Regulations where—

- (a) they first apply to a company on or after 5th December 2003 by reason of its—

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- (i) becoming a controlled foreign company or
- (ii) becoming subject to corporation tax,
- (b) a company which is already subject to corporation tax in respect of its general insurance business is charged to tax under Case I of Schedule D in respect of that business for the first time for a period of account beginning on or after 5th December 2003;
- (c) a controlled foreign company in relation to which—
 - (i) an apportionment under section 747(3) falls for the first time to be made regarding, or
 - (ii) section 748(1)(a) applies for the first time for,a period of account ending on or after 5th December 2003; or
- (d) the company ceases to be excluded from their operation on 5th December 2003 because of the amendments made to regulation 6 of the principal Regulations by regulation 8 of this instrument.

The new regulation 10 of the principal Regulations also provides for the making of elections under section 107(4) in respect of the original provisions of the period of account preceding that during which the company in question first becomes subject to the principal Regulations.