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STATUTORY INSTRUMENTS

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**2005 No. 3465**

**CORPORATION TAX**

**The Insurance Companies (Corporation  
Tax Acts) (Amendment) Order 2005**

*Made* - - - - 15th December 2005  
*Laid before the House of  
Commons* - - - - 16th December 2005  
*Coming into force* - - 6th January 2006

The Treasury make the following Order in exercise of the power conferred upon them by section 431A(3) and (6) of the Income and Corporation Taxes Act 1988<sup>(1)</sup>:

**Citation, commencement and effect**

1. This Order may be cited as the Insurance Companies (Corporation Tax Acts) (Amendment) Order 2005, shall come into force on 6th January 2006 and shall have effect in relation to periods of account beginning on or after 1st January 2005 and ending before 1st October 2006.

**Amendment of Chapter 1 of Part 12 of the Income and Corporation Taxes Act 1988**

2. Chapter 1 of Part 12 of Income and Corporation Taxes Act 1988 (special classes of companies and businesses: insurance companies and capital redemption business) is amended as follows.

3.—(1) Amend section 431 (interpretative provisions for the purposes of Chapter 1 of Part 12) as follows.

(2) In subsection (2)—

(a) after the definition of “contract of insurance”<sup>(2)</sup> insert—

““free assets amount”, in relation to an insurance company, means the excess of the value of the assets of the company’s long-term business over the aggregate of —

- (a) the value of the liabilities of that business,
- (b) any money debts (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996) of the company not within paragraph (a) above which are owed in respect of that business, and

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(1) 1988 c. 1. Section 431A was inserted by paragraph 2 of Schedule 6 to the Finance Act 1990 (c. 29), and amended by paragraph 3 of Schedule 9 to the Finance (No. 2) Act 2005 (c. 22).

(2) This definition was inserted by article 26 of S.I.2001/3629.

- (c) the amount of the shareholders' excess assets within the meaning given by section 432A(8)(b)(3);”;
- (b) omit the definition of “investment reserve”(4);
- (c) after the definition of “reinsurance business” insert—
  - ““shareholders' excess assets” has the meaning given by section 432A(8)(b)(5);”.
- (3) In subsection (2ZB)(6)—
  - (a) at the end of paragraph (b) omit “or”;
  - (b) in paragraph (c) for “investment reserve” substitute “free assets amount”;
  - (c) after paragraph (c) insert—
    - “or
    - (d) the opening amount of the shareholder’s excess assets of the transferor;”;
  - (d) in the words following paragraph (d) for “or values, or that reserve” substitute “values or amounts”.
- (4) In subsection (2ZC)—
  - (a) at the end of paragraph (b) omit “or”;
  - (b) in paragraph (c) for “investment reserve” substitute “free assets amount”;
  - (c) after paragraph (c) insert—
    - “or
    - (d) the closing amount of the shareholder’s excess assets of the transferor;”;
  - (d) in the words following paragraph (d) for “or values, or that reserve” substitute “values or amounts”.

**4.—(1)** Amend section 432ZA (linked assets) (7) as follows.

- (2) In subsection (1) at the end insert—

“and in a case where only part of an asset is so identified, references to a linked asset are references to that part.”.

**5.—(1)** Amend section 432A (apportionment of income and gains) as follows.

- (2) In subsection (6)—
  - (a) in the words before paragraph (a) for “a category of business” substitute “basic life assurance and general annuity business”;
  - (b) in paragraph (a)(i)—
    - (i) for “of the category” substitute “of that category of business”; and
    - (ii) for “to the category” substitute “to that category”;
  - (c) at the end of paragraph (a)(i) omit “and”;
  - (d) for sub-paragraph (ii) of paragraph (a) substitute—

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(3) Section 432A was inserted by paragraph 4 of Schedule 6 to the Finance Act 1990. Subsection (8) was amended by article 52(2)(c) of S.I. [2001/3629](#).

(4) This definition was inserted by paragraph 25 of Schedule 33 to the Finance Act 2003.

(5) Section 432A was inserted by paragraph 4 of Schedule 6 to the Finance Act 1990. Subsection (8) was amended by article 52(2)(c) of S.I. [2001/3629](#).

(6) This subsection was inserted by paragraph 22(1) of Schedule 33 to the Finance Act 2003.

(7) Section 432ZA was inserted by paragraph 11(2) of Schedule 8 to the Finance Act 1995: there are amendments which are not relevant for present purposes.

- “(ii) if there has been a relevant reattribution, the mean of the opening and closing amounts of the shareholders' excess assets, and
  - (iii) the mean of the appropriate parts of the opening and closing amounts of the free assets amounts; and”;
  - (e) in paragraph (b)(ii) for “that paragraph” substitute “subsection (6A)(a) below”.
- (3) After subsection (6) insert—
- “(6A) For the purposes of subsection (5) above “the relevant fraction”, in relation to any other category of business other than basic life assurance and general annuity business and overseas life assurance business, is the fraction of which—
- (a) the numerator is the aggregate of—
    - (i) the mean of the opening and closing liabilities of the category, reduced (but not below nil) by the mean of the opening and closing net values of any assets directly referable to the category, and
    - (ii) the mean of the appropriate parts of the opening and closing amounts of the free assets amounts; and
  - (b) the denominator is the aggregate of—
    - (i) the numerator given by paragraph (a) above
    - (ii) the numerators given by that paragraph in relation to the other categories of business; and
    - (iii) the numerators given by subsection (6)(a) above in relation to the basic life assurance and general annuity business.”.
- (4) In subsection (7)—
- (a) in the words before paragraph (a) for “(5) and (6)” substitute “(5), (6) and (6A)”;
  - (b) at the end of paragraph (a) omit “and”
  - (c) after paragraph (b) insert—
    - “and
    - (c) amounts are directly referable to basic life assurance and general annuity business if they fall within any of the following provisions—
      - (i) sections 438B(8), 441B(9) and 442A(10),
      - (ii) section 85(2C)(c) of the Finance Act 1989(11).”.
- (5) For subsection (8) substitute—
- “(8) In subsections (6) and (6A) above—
- (a) “appropriate part”, in relation to the free assets amount, means—
    - (i) where none (or none but an insignificant proportion) of the liabilities of the long-term business are with-profits liabilities, the part of that amount which bears to the whole the proportion A/B where—

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(8) Section 438B was inserted by paragraph 5 of Schedule 25 to the Finance Act 2001, amended by article 52(1)(f) of 2001/3629, and further amended by paragraph 13 of Schedule 33 to the Finance Act 2003.

(9) Section 441B was inserted by paragraphs 32 and 55(1) of Schedule 8 to the Finance Act 1995, and amended by paragraph 41 of Schedule 5 to the Finance Act 1998.

(10) Section 442A was inserted by paragraph 34 of Schedule 8 to the Finance Act 1995 and amended by paragraph 23 of Schedule 33 to the Finance Act 2003.

(11) 1989 c. 26, Subsection (2C) was inserted by paragraph 7 of Schedule 6 to the Finance Act 2004 and amended by paragraph 15 of Schedule 9 to the Finance (No. 2) Act 2005.

A is the amount of the liabilities of the category of business in question;

B is the whole amount of the liabilities of the long-term business; and

(ii) in any other case the part of the free assets amount which bears to the whole the proportion C/D where—

C is the amount of the with-profits liabilities of the category of business in question;

D is the whole amount of the with-profits liabilities of the long-term business; and

(b) the amount of the shareholders' excess assets in relation to any period of account of the company is the amount equal to SXA – L27 where—

(i) SXA is the aggregate amount of the assets shown in its non-participating funds which are attributed to its shareholders as a result of a relevant reattribution; and

(ii) L27 is the amount (if any) shown in line 27 of Form 19 in its periodical return for the relevant period of account.

(8A) In this section—

“non-participating funds” means accounts which relate exclusively to policies or contracts under which the policy holders or annuitants are not eligible to participate in surplus;

“reattribution” in relation to an insurance company which has an inherited estate, means the attribution of assets to shareholders' interests as a result of—

- (a) an agreement between the company and the relevant regulator as to the amount of that estate and its attribution between shareholders and policy holders; or
- (b) a decision of the company to specify and identify an amount of assets (otherwise than in connection with a transfer to the company's long-term insurance fund) as attributable only to shareholders' interests;

a reattribution is “relevant” if it arises as a result of any of the following—

- (a) a transfer of business under—
  - (i) section 49 of, or Schedule 2C to, the Insurance Companies Act 1982;
  - (ii) an insurance business transfer scheme (within the meaning of section 431(2));
- (b) a scheme of arrangement under section 425 of the Companies Act 1985;
- (c) an order under section 68 of the Insurance Companies Act 1982;
- (d) a waiver under section 148 of the Financial Services and Markets Act 2000;
- (e) an amendment to the company's memorandum, articles of association or other instrument regulating the company.

(8B) In subsection (8A) above—

“inherited estate” has the same meaning as it has in the Integrated Prudential Sourcebook; and

“relevant regulator” means the Financial Services Authority, the Treasury or the Secretary of State.”.

(6) In subsection (9)(b)(12)—

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(12) Subsection (9) was substituted by paragraph 13 of Schedule 8 to the Finance Act 1995.

- (a) for “investment reserve” substitute “free assets amount”;
- (b) for “that reserve” substitute “that amount”.

6.—(1) Amend section 432B(13) (apportionment of receipts brought into account) as follows.

(2) After subsection (3) insert—

“(4) The following provisions of this section have effect where sections 432C and 432D—

- (a) apply in relation to any account for a fund in which shareholders' excess assets are held, and
- (b) apply in relation to that account in relation to any period of account beginning on or after 1st January 2005 and ending before 1st October 2006.

(5) The part of the amount brought into account as income which is referable in accordance with section 432C to any category of business apart from—

- (a) basic life assurance and general annuity business, and
- (b) overseas life assurance business,

is reduced by the relevant fraction of the shareholders' excess income.

(6) The part of the amount brought into account as the increase or decrease in the value of assets or as other income which is referable in accordance with section 432D to any category of business apart from basic life assurance and general annuity business is reduced or increased as follows.

(7) The part of that amount is—

- (a) reduced by the relevant fraction of the shareholders' excess gains, or
- (b) increased by the relevant fraction of the shareholders' excess losses,

as the case may be.

(8) But no such reduction or increase is made if, in relation to the fund in question, an election in accordance with Rule 9.10(c) of the Prudential Sourcebook (Insurers) has effect for the period of account.

(9) For the purposes of this section—

“the relevant fraction”, in relation to a category of business, is the fraction of which—

- (a) the numerator is the section 83 net amount referable to the category; and
- (b) the denominator is the section 83 net amount referable to all categories of business apart from basic life assurance and general annuity business;

“the section 83 net amount” means the net amount (before giving effect to subsections (5) to (7) above) to be taken into account in accordance with section 83(2) of the Finance Act 1989(14) (that is to say, the aggregate amount to be taken into account as receipts reduced by the aggregate amount to be taken into account as expenses);

“shareholders' excess gains” means the amount by which—

- (a) the investment gains referable to basic life assurance and general annuity business in accordance with section 432A for the period of account exceeds
- (b) those gains that would be so referable if section 432A(6) were amended in accordance with subsection (10) below;

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(13) Section 432B was inserted by paragraph 4 of Schedule 6 to the Finance Act 1990. There are amendments which are not relevant for present purposes.

(14) 1989 c. 26. Section 83 was substituted by paragraph 16(1) of Schedule 8 to the Finance Act 1995 and amended by articles 54, 56 and 60(1) of S.I. 2001/3629, paragraph 2 of Schedule 33 to the Finance Act 2003 and article 8 of S.I. 2004/3266.

“shareholders' excess income” means the amount by which—

- (a) the investment income referable to basic life assurance and general annuity business in accordance with section 432A for the period of account exceeds
- (b) the amount that would be so referable if section 432A(6) were amended in accordance with subsection (10) below;

“shareholders' excess losses” means the amount by which—

- (a) the investment losses referable to basic life assurance and general annuity business in accordance with section 432A for the period of account exceeds
- (b) the amount that would be so referable if section 432A(6) were amended in accordance with subsection (10) below.

(10) For the purposes of the definitions of “shareholders' excess gains”, “shareholders' excess income” and “shareholders' excess losses”, the amendments of section 432A(6) mentioned in those definitions are—

- (a) in paragraph (a)(ii) the insertion after “the mean of” of “the appropriate parts of”;
- (b) in paragraph (a)(ii) the insertion after “assets” of—

“(and for this purpose the definition of “appropriate part” in subsection (8)(a) below applies in relation to the shareholders' excess assets as it applies in relation to the free assets amount)”;

- (c) in paragraph (b) the substitution for sub-paragraph (ii) of—

“(ii) the numerators that would be given by that paragraph in relation to the other categories of business if this subsection applied in relation to any category of business.”.

(11) For the purposes of subsection (9)—

- (a) the amount of a company's investment gains is the greater of  $LG + NTC - NTD$  and nil where—

- (i) LG is the amount of chargeable gains accruing from disposals of assets of the company's long-term insurance fund in the period of account after deducting the aggregate of allowable losses so accruing in the period of account and any previous period of account to which section 8(1)(b) of the Taxation of Chargeable Gains Act 1992 (company's total profits to include chargeable gains) applies;

- (ii) NTC is the amount of non-trading credits for the period given by paragraph 2(1) of Schedule 11 to the Finance Act 1996<sup>(15)</sup> which arise to the company from increases in the fair value of the company's loan relationships or from related transactions; and

- (iii) NTD is the amount of non-trading debits given by that paragraph which arise to the company from decreases in the fair value of the company's loan relationships or from related transactions;

- (b) “investment income” means the aggregate of—

- (i) the non-trading credits for the period given by paragraph 2(1) of Schedule 11 to the Finance Act 1996<sup>(16)</sup> which do not arise to the company from increases in the fair value of the company's loan relationships or from related transactions;

- (ii) income falling with Schedule A; and

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<sup>(15)</sup> 1996 c. 8.

<sup>(16)</sup> 1996 c. 8.

- (iii) income falling within Case V of Schedule D; and
- (c) the amount of a company's investment losses is the greater of LA + NTD – NTC and nil where—
  - (i) LA is the amount of the company's allowable losses accruing from disposals of assets of the company's long-term insurance fund in the period of account after deducting chargeable gains so accruing; and
  - (ii) NTC and NTD have the same meanings as they have in relation to a company's investment gains.”.

7.—(1) Amend paragraph 4 of Schedule 19AA(17) (overseas life assurance fund) as follows.

(2) In sub-paragraph (1), in the definition of “B”, “investment reserve” substitute “free assets amount”.

(3) In sub-paragraph (2) for “investment reserve” substitute “free assets amount”.

(4) In sub-paragraph (5) for “investment reserve”(18) substitute “free assets amount”.

#### **Amendment of section 88 of the Finance Act 1989**

8.—(1) Amend section 88 of the Finance Act 1989 (corporation tax: policy holder's fraction of profits) as follows.

(2) In subsection (3A)(19)—

- (a) at the end of paragraph (a) insert “and”; and
- (b) omit paragraphs (aa) to (ac).

#### **Amendment of Schedule 11 to the Finance Act 1996**

9.—(1) Amend Schedule 11 to the Finance Act 1996 (loan relationships: special provision for insurers) as follows.

(2) In paragraph 3A(5)(20)—

- (a) for “subsections (6) and (8)” substitute “subsections (6), (6A) and (8)”; and
- (b) in paragraph (b) for “the reference in subsection (6)(a)” substitute “the references in subsections (6)(a) and (6A)(a)”.

#### **Consequential repeals**

10. The following provisions are repealed—

- (a) paragraph 25 of Schedule 33 to the Finance Act 2003; and
- (b) paragraph 16 of Schedule 9 to the Finance (No. 2) Act 2005.

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(17) Schedule 19AA was inserted by paragraph 10 of Schedule 7 to the Finance Act 1990. Paragraph 4 has been amended by article 4 of S.I. 1994/3278, article 3 of S.I. 200/2188, article 52 of S.I. 2001/3629 and paragraph 27 of Schedule 33 to the Finance Act 2003. Paragraph 4 has been amended. Relevant amendments are those made by article 4 of S.I. 1994/3278, article 3 of S.I. 2000/2188, article 52 of S.I. 2001/3629 and paragraph 27 of Schedule 33 to the Finance Act 2003.

(18) The definition was amended by article 3 of S.I. 2002/2188.

(19) Subsection (3A) was inserted by paragraph 6(1) of Schedule 33 to the Finance Act 2003. Paragraphs (aa) to (ac) were inserted by paragraph 16 of the Finance (No. 2) Act 2005.

(20) Paragraph 3A was inserted by section 109(8) of the Finance Act 2000.

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**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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15th December 2005

*Dave Watts*  
*Tom Watson*  
Two of the Lords Commissioners of Her  
Majesty's Treasury



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## EXPLANATORY NOTE

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

This Order amends Chapter 1 of Part 12 of the Income and Corporation Taxes Act 1988 (c. 1: “ICTA”) and other provisions of the Corporation Tax Acts relating to companies carrying on carrying on life assurance business, primarily to amend the apportionment rules in section 432A ICTA to ensure that income and gains of such a company’s inherited estate are not attributed to any category of business where the income and gains would be exempt from tax.

Article 1 of the Order provides for its citation, commencement and effect.

Article 2 introduces the amendments to Chapter 1 of Part 12 (“Chapter 1”) of ICTA.

Article 3 amends section 431, which contains interpretative provisions for the purposes of Chapter 1, in consequence of amendments made by the later provisions of the Order.

Article 4 makes an amendment to section 432ZA to clarify the effect of references in that section to linked assets, where only part of the value of an asset is identified in an insurance company’s records for the purpose of determining the amounts of benefits which are expressed to be linked to the value of that part.

Article 5 amends section 432A to provide for separate treatment for basic life assurance and general annuity business (“BLAGAB”) on the one hand and other categories of business on the other, and makes other changes which are consequent upon the separate treatment of BLAGAB.

Article 6 amends section 432B (apportionment of receipts brought into account) to make new provision for the adjustment of amounts computed under section 83 of the Finance Act 1989 in respect of shareholder’s excess income and gains.

Article 7 makes amendments to Schedule 19AA to ICTA (which forms part of Chapter 1) as a consequence of the introduction of the concept of the free asset amount.

Article 8 makes an amendment to section 88 of the Finance Act 1989, removing provisions which are unnecessary in consequence of the changes made by the earlier provisions of this Order.

Article 9 makes an amendment to Schedule 11 to the Finance Act 1996 which is consequent upon the amendments to section 432A in respect of the computation of the relevant fraction of the insurance company’s business for the purposes of attributing income and gains to particular funds.

Article 10 contains consequential repeals.

This Order does not impose new costs on business.