
STATUTORY INSTRUMENTS

2008 No. 562

The Income Tax (Purchased Life Annuities) Regulations 2008

PART 3

Additional requirements where annuity is
purchased from a non-United Kingdom insurer

Application of this Part

9. This Part applies where an annuitant has purchased an annuity from a non-United Kingdom insurer.

Nomination of a tax representative

10.—(1) Subject to regulations 17 and 18, a non-United Kingdom insurer who sells or intends to sell annuities to annuitants in the United Kingdom, must nominate a United Kingdom resident tax representative.

(2) A person shall not be a tax representative unless—

- (a) if an individual, that person is resident in the United Kingdom and has a fixed place of residence there; or
- (b) if not an individual, that person has a business establishment in the United Kingdom; and
- (c) there has been a nomination approved by the Commissioners in accordance with regulation 11.

Procedure for nomination

11.—(1) A nomination to the Commissioners of a tax representative by a non-United Kingdom insurer must be made in writing and must contain the following information—

- (a) the full name or title under which the non-United Kingdom insurer is registered in the country in which his principal place of business is situated and the address in that country of the principal place of business;
- (b) the business address of any permanent establishment which the non-United Kingdom insurer has in the United Kingdom;
- (c) the name of the person nominated as a tax representative, and—
 - (i) if an individual, the address of that person's fixed place of residence in the United Kingdom; or
 - (ii) if not an individual, the address of that person's business establishment in the United Kingdom; and
- (d) the office of Her Majesty's Revenue and Customs to which, and the tax reference under which, the person nominated submits tax returns.

(2) A nomination under this regulation must be accompanied by a declaration that the person nominated is willing and able to secure that the relevant duties are discharged by or on behalf of the non-United Kingdom insurer, signed—

- (a) if the person nominated is an individual, by that individual; or
- (b) if the person nominated is not an individual—
 - (i) by a proper officer as defined by section 108(3) of the Taxes Management Act 1970(1) in the case of a company; and
 - (ii) by any partner who is an individual in the case of a partnership.

(3) The insurer must make a nomination under this regulation within 3 months of the first instance on which payments under an annuity commence.

Decision as to nomination

12.—(1) Within the period of 30 days beginning with the date of receipt of a nomination under regulation 11, the Commissioners must give notice to the non-United Kingdom insurer and the person nominated that they—

- (a) approve the person nominated by the non-United Kingdom insurer as the insurer's tax representative;
- (b) refuse to approve the person nominated by the non-United Kingdom insurer as the insurer's tax representative on one or more of the grounds specified in paragraph (4); or
- (c) require the non-United Kingdom insurer or the person nominated, or both, to supply within the period of 30 days beginning with the date on which the notice in paragraph (1) was received, such further information as they may reasonably require in order to satisfy the Commissioners that the person nominated is a fit and proper person to be a tax representative.

(2) A notice under paragraph (1)(c) must specify the further information that the Commissioners require.

(3) Where the non-United Kingdom insurer or the person nominated, supplied, or both of them supply, information pursuant to a notice under paragraph (1)(c), the Commissioners must within the period of 30 days beginning with the date on which the information is received—

- (a) give notice to the non-United Kingdom insurer and the person nominated—
 - (i) that they approve the person nominated; or
 - (ii) that they refuse to approve the person nominated, stating on which of the grounds specified in paragraph (4) they rely, or
- (b) give further notice under paragraph (1)(c).

(4) The grounds on which the Commissioners may refuse to approve the person nominated by the non-United Kingdom insurer are that—

- (a) the requirements of regulation 11 have not been complied with; or
- (b) the Commissioners have reasonable grounds to believe that the nominated person is unwilling or unable to assume any of the obligations that are prescribed in these Regulations.

(5) Where the Commissioners refuse to approve the person nominated they must give the insurer notice in writing to that effect, stating the reason for the refusal.

(6) Where the Commissioners refuse to approve the person nominated on the ground set out in paragraph (4)(a), the insurer must—

- (a) submit a further nomination for that person; or
- (b) nominate another person as tax representative,

within 30 days beginning with the date of receipt of the notice under paragraph (5).

(7) Where the Commissioners refuse to approve the person nominated on the ground set out in paragraph (4)(b), the insurer must nominate another person in accordance with regulation 11 within 3 months beginning with the date of receipt of the notice under paragraph (5).

(8) A nomination made under paragraph (6) or (7) must contain the information required by regulation 11 and the Commissioners must give their decision on that nomination in accordance with this regulation.

Notification of changes

13. The insurer must notify the Commissioners of any changes to the information that was provided in the nomination made under regulation 11 as soon as practicable.

Termination of appointment of a tax representative – other than death or bankruptcy, etc

14.—(1) The appointment of a tax representative may be terminated at any time, either by the insurer or the tax representative, or by the Commissioners' withdrawing their approval of the tax representative's nomination.

(2) Where the Commissioners withdraw their approval of the nomination, they must state on which of the grounds specified in paragraph (3) they rely and send notice in writing of the withdrawal to the insurer and the tax representative.

(3) The grounds on which the Commissioners may withdraw approval of the appointment are where they have reason to believe that the tax representative—

- (a) has failed to fulfil any obligations under these Regulations;
- (b) no longer satisfies the requirements of regulation 10(2); or
- (c) for some other reason is not fit to act as such.

(4) The tax representative or the non-United Kingdom insurer may terminate the appointment on any ground whatsoever.

(5) Where the appointment is terminated under paragraph (4) the person terminating the appointment must send notice in writing of the termination to the other party to the appointment and to the Commissioners.

(6) Where the appointment is terminated under this regulation the insurer must, within 3 months starting with the date on which notice of the termination under paragraph (5) was given—

- (a) nominate another person as tax representative;
- (b) make an application under regulation 17 to be released from the requirement to nominate a tax representative; or
- (c) make other arrangements with the Commissioners in accordance with regulation 18.

(7) Where a nomination is made under paragraph (6)(a), that nomination must contain the information required by regulation 11 and the Commissioners must give their decision on the nomination in accordance with regulation 12.

Termination of appointment of a tax representative – death or bankruptcy, etc

15.—(1) Where the person nominated as a tax representative—

- (a) is an individual who—

(i) becomes bankrupt or in Scotland, whose estate is sequestered;
(ii) makes any arrangement or composition with their creditors generally; or
(iii) dies, or
(b) is a company or partnership which is dissolved or wound up,
the appointment ceases and the non-United Kingdom insurer must comply with paragraphs (2) and (3).

(2) The insurer must—

- (a) nominate another person as tax representative;
- (b) make an application under regulation 17 to be released from the requirement to nominate a tax representative; or
- (c) make other arrangements with the Commissioners in accordance with regulation 18,

within the period of 3 months beginning with the date of the event in question.

(3) Where a nomination is made under paragraph (2)(a), that nomination must contain the information required by regulation 11 and the Commissioners must give their decision on the nomination in accordance with regulation 12.

Tax representative to remain in post until successor appointed

16. Where a tax representative's appointment is terminated in accordance with regulation 14, the representative must continue to act as tax representative until a successor's nomination is approved by the Commissioners.

Release of non-United Kingdom insurer from requirement to nominate a tax representative

17.—(1) Where the non-United Kingdom insurer makes a declaration that the insurer will conduct life annuity business in accordance with the law applicable in the United Kingdom (including these Regulations), the Commissioners may agree to release the insurer from the requirement to have a tax representative.

(2) Paragraph (1) is subject to paragraph (3) and regulation 4(3).

(3) Where the insurer—

- (a) is resident in a relevant EEA State; and
- (b) the disclosure by that person to the Commissioners of information with respect to holders of annuities is a criminal offence under the law of that State,

the insurer is not bound by the requirements of regulation 7(11).

(4) The Commissioners may at any time give notice to the non-United Kingdom insurer of their decision to withdraw their agreement to release the insurer from the requirement that there be a tax representative, other than where the circumstances described in paragraph (3) exist.

(5) An application by a non-United Kingdom insurer to be released from the requirement to have a tax representative must be made in writing to the Commissioners within the period specified in regulation 11(3).

(6) The Commissioners must, within the period of 30 days beginning with the date on which an application under paragraph (5) was received, give notice to the insurer that they—

- (a) agree to release the insurer from the requirement to have a tax representative;
- (b) refuse to agree to release the insurer from that requirement; or

- (c) require the insurer to supply, within the period of 30 days beginning with the date of the notice, such information as they may reasonably require to enable them to determine whether there are sufficient grounds to release the insurer from that requirement.
- (7) A notice under paragraph (6)(c) must specify the information that the Commissioners require.
- (8) Where the insurer supplies information required by a notice under paragraph (6)(c) the Commissioners must, within the period of 30 days beginning with the date on which that information was received—

- (a) give notice to the insurer that they agree to release the insurer from the requirement that there be a tax representative;
- (b) give notice to the insurer that they refuse to do so; or
- (c) give a further notice under paragraph (6)(c).

(9) Where—

- (a) the Commissioners give notice that they refuse to release the insurer from the requirement that there be a tax representative;
- (b) it ceases to be a criminal offence under the law of the relevant EEA State in which the non-United Kingdom insurer is resident for that person to disclose to the Commissioners information with respect to the holders of annuities; or
- (c) the Commissioners give notice to the non-United Kingdom insurer of their decision to withdraw their agreement to release the insurer from the requirement that there be a tax representative,

paragraph (10) applies.

(10) If this paragraph applies, the non-United Kingdom insurer must either nominate a person as a tax representative, or make other arrangements with the Commissioners in accordance with regulation 18, within the period of 3 months beginning with either—

- (i) the date of the notice; or
- (ii) the date on which disclosure to the Commissioners ceased to be a criminal offence,

as the case may be.

(11) Where the non-United Kingdom insurer nominates a person as a tax representative in accordance with paragraph (10), that nomination must contain the information required by regulation 11 and the Commissioners must give their decision on that nomination in accordance with regulation 12.

Other arrangements

18.—(1) A non-United Kingdom insurer may make other arrangements with the Commissioners for the purpose of securing the discharge by the insurer or on the insurer's behalf of the obligations under United Kingdom law.

(2) A non-United Kingdom insurer must, within the period specified in regulation 11(3), give notice in writing to the Commissioners applying to—

- (a) make arrangements for the purpose specified in paragraph (1); and
- (b) be released from the duty to either nominate a tax representative or the requirement to nominate a tax representative.

(3) The notice referred to in paragraph (2) must—

- (a) set out the other arrangements that the non-United Kingdom insurer wishes to make with the Commissioners; and

- (b) give reasons why the requirement either to nominate a tax representative or have to apply to be released from the requirement to nominate a tax representative, should not apply.
- (4) The Commissioners must, within the period of 30 days beginning with the date on which an application under paragraph (2) was received, give notice to the insurer that they—
 - (a) agree to the proposed arrangements, with such modification as they may specify;
 - (b) refuse to agree to those arrangements; or
 - (c) require the insurer to supply, within the period of 30 days beginning with the date of the notice, such information as they may reasonably require to enable them to determine whether they should agree to those arrangements.
- (5) A notice under paragraph (4)(a) must specify the modifications to the arrangements that the Commissioners require.
- (6) A notice under paragraph (4)(c) must specify the further information that the Commissioners require.
- (7) Where the non-United Kingdom insurer indicates the ability to comply with the modifications required by the Commissioners, or supplies information pursuant to a notice under paragraph (4)(c) as the case may be, the Commissioners must, within the period of 30 days beginning with the date on which the indication or the information is received—
 - (a) give notice to the insurer—
 - (i) that they approve the arrangement set out in the application;
 - (ii) that they refuse to approve the arrangement, stating the reason for the refusal; or
 - (b) give further notice under paragraph (4)(c).
- (8) If the Commissioners have reason to believe that any arrangements which have been made under this regulation do not secure the discharge by the non-United Kingdom insurer or on the insurer's behalf of the obligations under United Kingdom law, they must give notice to the insurer that those arrangements are no longer in force with effect from the date of the notice.
- (9) Where notice is given by the Commissioners in accordance with paragraph (8)—
 - (a) subject to compliance with any modifications specified under paragraph (5), the non-United Kingdom insurer must nominate a person as a tax representative within the period of 3 months from the date of the notice;
 - (b) that nomination must contain the information specified in regulation 11; and
 - (c) the Commissioners must give their decision on that nomination in accordance with regulation 12.

Appointment by the Commissioners of a non-United Kingdom insurer's tax representative

- 19.—**(1) Where the non-United Kingdom insurer has failed—
- (a) to nominate a person as tax representative in accordance with regulations 10 and 11;
 - (b) following the refusal of the Commissioners to approve a person so nominated, to nominate another person as tax representative in accordance with regulation 12(6)(b) or (7);
 - (c) following the withdrawal by the Commissioners of their approval of a person nominated, to nominate another person as tax representative in accordance with regulation 14(6);
 - (d) following the termination of the appointment of the insurer's tax representative under regulation 14(4) or on the occurrence of one of the events described in regulation 15, to nominate another person in accordance with regulation 14(6);
 - (e) following the giving of a notice by the Board in accordance with regulation 18(8), to nominate a person as tax representative in accordance with regulation 18(9);

- (f) following—
 - (i) the refusal of the Commissioners to agree to release the insurer from the requirement that there be a tax representative;
 - (ii) the disclosure to the Commissioners of information with respect to relevant annuities ceasing to be a criminal offence under the law of the relevant EEA State in which the insurer is resident; or
 - (iii) the giving of a notice by the Commissioners of their intention to withdraw from their agreement to release the insurer from the requirement that there be a tax representative,to nominate a person as tax representative in accordance with regulation 17(10);
- (g) following the termination of the appointment of a person under paragraph (5), to nominate another person in accordance with paragraph (2) of this regulation;

the Commissioners may appoint a person who satisfies the requirements of paragraphs (2) and (3) to be the non-United Kingdom insurer's tax representative.

(2) A person appointed by the Commissioners to be the tax representative of a non-United Kingdom insurer must be a person who has a significant business or economic connection with the non-United Kingdom insurer and may in particular be—

- (a) a company which is connected within the meaning of section 839 of the Income and Corporation Taxes Act 1988(2); or
- (b) the permanent establishment in the United Kingdom of any such company.

(3) Before being appointed under this regulation, the person must make a declaration to the Commissioners in similar terms to the declaration specified in regulation 11(2).

(4) The Commissioners must give notice in writing of their decision to the person appointed under this regulation and to the non-United Kingdom insurer and, subject to regulation 20(6), the date of the appointment is the date of the notice.

(5) The Commissioners may at any time terminate the appointment of the person appointed by them as the tax representative under this regulation by giving notice in writing to the person appointed and to the non-United Kingdom insurer.

(6) If the Commissioners terminate an appointment under paragraph (5), the non-United Kingdom insurer must nominate another person as tax representative within the period of 3 months beginning with the date on which that notice is given.

(7) The non-United Kingdom insurer may at any time nominate a person as tax representative in place of the person appointed by the Commissioners and, if the Commissioners approve the nomination of that person, at the same time as the Commissioners give notice of their decision approving it they must give notice in writing to the person appointed by them that the latter's appointment ceased on the date of the appointment of the substitute.

(8) If the non-United Kingdom insurer nominates another person in accordance with paragraph (7), that nomination must contain the information required by regulation 11 and the Commissioners must give their decision on that nomination in accordance with regulation 12.

Appeals against decisions of the Commissioners

20.—(1) A non-United Kingdom insurer to whom notice has been given of a decision of the Commissioners—

- (a) refusing to approve a person nominated as tax representative;

- (b) withdrawing their approval of a person nominated as tax representative;
- (c) appointing a person as tax representative;
- (d) that arrangements made under regulation 18 are no longer in force;
- (e) refusing to agree to release the insurer from the requirement that there be a tax representative; or
- (f) to withdraw from their agreement to release the insurer from the requirement to have a tax representative,

may appeal against the decision contained in that notice by giving notice in writing to the Commissioners within the period of 30 days after the date of the notice of the decision in question.

(2) A person who has been appointed to be the tax representative of a non-United Kingdom insurer under regulation 12(1) may appeal against the decision contained in that notice by giving notice to the Commissioners within the period of 30 days after the date of the notice of the decision sought to be appealed.

(3) An appeal under paragraph (1) or (2) is to the Special Commissioners.

(4) The provisions in Part 5 of the Taxes Management Act 1970(3) (appeals and other proceedings) and in regulations made under sections 56B to 56D of that Act apply to an appeal under this regulation and the Special Commissioners must, on appeal to them, confirm the decision contained in the notice unless they are satisfied that it ought to be quashed.

(5) Where a non-United Kingdom insurer appeals against a decision of the Commissioners referred to in paragraph (1)(a), (b), (d), (e) or (f), and the decision is confirmed on appeal, the period of 3 months within which another person must be nominated as tax representative does not begin to run until such time as there is no possibility of a further appeal against that decision.

(6) Where a non-United Kingdom insurer appeals against a decision of the Commissioners appointing a person as tax representative, or the person appointed by the Commissioners to be the tax representative of a non-United Kingdom insurer appeals against the decision to appoint, the date of the appointment of that person is the first date on which there is no possibility of a further appeal against that decision.

(7) Where a non-United Kingdom insurer appeals against a decision of the Commissioners referred to in paragraph (1)(a) and the decision of the Commissioners is quashed on appeal, the date of the appointment of the person nominated as the tax representative of the non-United Kingdom insurer is the first date on which there is no possibility of a further appeal against the decision quashing the decision of the Commissioners.