
STATUTORY INSTRUMENTS

2012 No. 3009

CORPORATION TAX

The Insurance Companies (Transitional Provisions) Regulations 2012

<i>Made</i>	- - - -	<i>3rd December 2012</i>
<i>Laid before the House of Commons</i>	- - - -	<i>4th December 2012</i>
<i>Coming into force</i>	- -	<i>31st December 2012</i>

The Treasury make the following Regulations in exercise of the powers conferred by paragraphs 6(3), 7(2)(e), 8(2) and 37 of Schedule 17 (Part 2: Transitional Provision) to the Finance Act 2012⁽¹⁾.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Insurance Companies (Transitional Provisions) Regulations 2012 and come into force on 31st December 2012

(2) In these Regulations—

“category” means a category in the Table;

“Schedule 17” means Schedule 17 to the Finance Act 2012;

“specified businesses” means the businesses described in paragraph 8(1)(a) to (c) of Schedule 17;

“the Table” means the Table set out in regulation 4.

Overview

2. In these Regulations—

(a) regulations 3 to 6 make provision in relation to determining the amount of the particular items that when taken together result in the total transitional difference;

(b) regulation 7 specifies particular items that are excluded items;

(c) subject to regulation 15, regulations 8 to 14 make provision to apportion particular items that are relevant computational items between the specified businesses;

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- (d) regulation 15 makes provision in relation to items apportioned to basic life assurance and general annuity business where section 67 of the Finance Act 2012 (exception where BLAGAB small part of long-term business) applies;
- (e) regulation 16 amends paragraph 20 of Schedule 17.

Comparison of items in the 2012 periodical return and the 2012 balance sheet

3.—(1) To determine the particular items that when taken together result in the total transitional difference, the insurance company must compare—

- (a) the amounts included in the 2012 periodical return for the entry for each category specified in column 1 of the Table, with
- (b) the amounts included in the 2012 balance sheet for the entry for that category specified in column 2 of the Table.

(2) The difference between those amounts is the particular item in relation to each category.

This is subject to regulation 5(6).

(3) The comparison must be made separately in relation to with-profits funds and non-profit funds and separately in relation to each with-profits fund.

(4) Where no entry is specified as a comparator in relation to any category, the amount is treated as nil.

(5) In determining the total amount for an entry, assets are given a positive figure and liabilities are given a negative figure.

(6) For the purposes of paragraph (5), amounts in line 51 of Form 14 are treated as liabilities.

(7) If the amount for the entry for a particular category in column 2 exceeds the amount shown in column 1 the particular item is a positive figure.

(8) If the amount for the entry for a particular category in column 1 exceeds the amount shown in column 2, the particular item is a negative figure.

Comparison Table

4. The Table for the purposes of the comparison referred to in regulation 3 is as follows—

<i>Category</i>	<i>Column 1</i>	<i>Column 2</i>
	<i>Amounts shown in the 2012 periodical return</i>	<i>Amounts shown in the 2012 balance sheet attributable to long-term business</i>
1	None	Deferred acquisition costs (however described in the balance sheet) and other tax deductible amounts, which represent costs relieved for tax in an accounting period ending on or before 31 December 2012 but which are debited in accounts for an accounting period beginning after that date
2	None	Amount included as an asset in respect of the value of future profits arising from a business (or part of a business) transferred to the company (but excluding an asset so

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<i>Category</i>	<i>Column 1</i>	<i>Column 2</i>
	<i>Amounts shown in the 2012 periodical return</i>	<i>Amounts shown in the 2012 balance sheet attributable to long-term business far as it is regarded for accounting purposes as internally-generated)</i>
3	None	Loan liability where receipt of the loan was brought into account in line 15 of Form 40 of any periodical return which is, or which represents, an outstanding contingent loan
4	None	Liability under a financial re-insurance arrangement which represents an outstanding re-insurance amount
5	None	Amount in respect of intangible assets to which Part 8 of CTA 2009 ⁽²⁾ (intangible fixed assets) would apply but for section 902 of that Act
6	Amount in respect of the admissible value of structural assets held in a non-profit fund, reduced by any increase and increased by any decrease reflected in that value to the extent that subsection (1) of section 83XA of the Finance Act 1989 (structural assets) ⁽³⁾ has not applied to that increase or decrease	Amount in respect of structural assets
7	None	Deferred income reserves and other amounts which represent income taxed in an accounting period ending on or before 31 December 2012 but which are credited in accounts for an accounting period beginning after that date
8	Amounts included in line 21 of Form 14 to the extent they relate to deferred policyholder tax	The closing deferred policyholder tax balance for the period of account where it is a net liability (subject to regulation 5(2) and (3))
9	Amounts— (a) that are not taxable or not deductible under Part 3 of CTA 2009 (Trading Income) as that Part applies to insurance companies, or (b) that are unrecognised capital amounts included in line 51 of Form 14,	Amounts— (c) that are not taxable or not deductible under Part 3 of CTA 2009 as that Part applies to insurance companies, or (d) that relate to a non-profit fund included in the fund for future appropriations or the unallocated divisible surplus,

(2) “CTA 2009” is defined in section 228 of the Finance Act 2012 as the Corporation Tax Act 2009 (c. 4).

(3) 1989 c. 26. Section 83XA was inserted by paragraph 2(1) of Schedule 10 to the Finance Act 2007 (c. 11) and has been amended by paragraph 7 of Schedule 17 to the Finance Act 2008 (c. 9).

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<i>Category</i>	<i>Column 1</i>	<i>Column 2</i>
	<i>Amounts shown in the 2012 periodical return</i> (subject to regulation 5(2), (4) and (5))	<i>Amounts shown in the 2012 balance sheet attributable to long-term business</i> (subject to regulation 5(2) and (5))
10	Amounts in relation to which the taxability or deductibility (or the timing of taxability or deductibility) in computing the company's life assurance trade profits is determined in accordance with a specific provision of the Corporation Tax Acts ⁽⁴⁾ applying to such an amount where the same provision applies before and after the commencement of Part 2 of the Finance Act 2012	Equivalent amounts in relation to which the taxability or deductibility (or the timing of taxability or deductibility) in computing the company's life assurance trade profits is determined in accordance with a specific provision of the Corporation Tax Acts applying to such an amount where the same provision applies before and after the commencement of Part 2 of the Finance Act 2012
11	Amount in respect of linked assets (or part asset)	Amount in respect of linked assets (or part asset)
12	Mathematical reserves net of reinsured liabilities (subject to regulation 5(2))	Technical provisions net of reinsured liabilities (subject to regulation 5(2))
13	Amount included in line 51 of Form 14 relating to with-profits funds	Fund for future appropriations or the unallocated divisible surplus except in so far as it includes amounts arising in a non-profit fund
14	Amount included in line 51 of Form 14 relating to non-profit funds except in so far as this includes— (a) amounts brought into account by section 83YA of the Finance Act 1989 (changes in value of assets brought into account: non-profit companies) ⁽⁵⁾ , or (b) unrecognised capital amounts, reduced by the amount of any increase, and increased by the amount of any decrease, reflected in the admissible value of structural assets held in a non-profit fund to the extent that subsection (1) of section 83XA of the Finance Act 1989 (structural assets) has not applied to that increase or decrease (see also regulation 5(1))	None

(4) "The Corporation Tax Acts" is defined in Schedule 1 to the Interpretation Act 1978 (c. 30) as meaning the enactments relating to the taxation of the income and chargeable gains of companies and of company distributions".

(5) Section 83YA was inserted by paragraph 7(1) of Schedule 11 to the Finance Act 2006 (c. 25) and has been amended by paragraphs 7(2) of Schedule 9, by paragraphs 8(2) and 17(2) of Schedule 10 and by Part 2(10) of Schedule 27 to the Finance Act 2007 and by articles 24 and 26 of S.I. 2008/381.

<i>Category</i>	<i>Column 1</i>	<i>Column 2</i>
	<i>Amounts shown in the 2012 periodical return</i>	<i>Amounts shown in the 2012 balance sheet attributable to long-term business</i>
15	None (subject to regulation 5(2) and (4))	The closing deferred policyholder tax balance for the period of account where it is a net asset (subject to regulation 5(2) and (3))
16	Amounts reflected in the cumulative taxed surplus which are not taken into account in determining any particular item in relation to categories 1 to 15 and which are referable to particular policies	Amounts reflected in the amount attributed to shareholders as at 31 December 2012 which are not taken into account in determining any particular item in relation to categories 1 to 15 and which are referable to particular policies
17	Amounts reflected in the cumulative taxed surplus which are not taken into account in determining any particular item in relation to any other category	Amounts reflected in the amount attributed to shareholders as at 31 December 2012 which are not taken into account in determining any particular item in relation to any other category

Adjustments to Table amounts

5.—(1) The amount in column 1 of category 14 cannot be reduced except as expressly provided in category 14.

(2) Where the calculation of the mathematical reserves or the technical provisions referred to in category 12 includes amounts in respect of deferred tax, paragraphs (3) to (5) apply.

(3) Amounts in column 2 of category 12 which relate to deferred policyholder tax are excluded from category 12 and are included in the determination of the particular item in category 8 or category 15 as the case may be.

(4) If the aggregate of amounts in column 1 of category 12 which relate to deferred policyholder tax is a positive figure, that aggregate amount is excluded from category 12 and is included—

- (a) in column 1 of category 15 to the extent that it does not exceed the amount in column 2 of category 15 (as adjusted under paragraph (3)), and
- (b) in column 1 of category 9 in so far as it exceeds the amount in column 2 of category 15.

(5) Amounts in respect of deferred tax not within paragraphs (3) or (4) are excluded from the amount in category 12 and are included as an amount in category 9.

(6) If the total of all the particular items in relation to category 15 determined by the comparisons made under regulation 3 (adjusted under paragraphs (2) to (4) of this regulation) exceeds the deferred policyholder tax—

- (a) the particular items in relation to category 15 are reduced by the amount of the excess (but not below nil), and
- (b) the particular items in relation to category 8 are increased by the same amount.

Where this paragraph applies and there is more than one particular item in relation to category 15, the extent to which each item is adjusted under subparagraphs (a) and (b) is determined on a just and reasonable basis.

(7) For the purposes of paragraph (6), “deferred policyholder tax” means—

- (a) the amount included in the accounts of the company for the accounting period ending on 31 December 2012 in respect of deferred tax so far as it is wholly attributable to policyholder tax, and
- (b) amounts in column 2 to which paragraph (3) applies.

Table definitions

6. In the Table and regulation 5—

- “admissible value” has the meaning given in section 83XA(9) of the Finance Act 1989;
- “the closing deferred policyholder tax balance for the period of account” shall be interpreted in accordance with section 108 of the Finance Act 2012;
- “deferred income reserves” means the fee, commission or other income received in respect of contracts with policyholders which for accounting purposes is deferred and recognised as income over more than one period of account;
- “deferred policyholder tax” means the amount included in the 2012 periodical return or in the accounts of the company for the accounting period ending on 31 December 2012 in respect of deferred tax so far as it is wholly attributable to policyholder tax (except in regulation 5(6) in which case see regulation 5(7));
- “life assurance trade profits” means profits arising from life assurance business calculated in accordance with the provisions applicable for the purposes of the taxation of such profits under section 35 of CTA (charge on trade profits);
- “linked assets” means assets of an insurance company which are identified in its records as assets by reference to the value of which benefits provided for under a policy or contract are to be determined and in cases where only part of an asset is so identified, references to a linked asset are references to that part;
- “mathematical reserves” are those reserves which are determined in accordance with section 1.2 of the Insurance Prudential Sourcebook⁽⁶⁾;
- “outstanding contingent loan” has the meaning given in paragraph 7(3) of Schedule 17;
- “outstanding re-insurance amount” has the meaning given in paragraph 7(4) of Schedule 17;
- “structural assets” has the meaning given in section 83XA(3) of the Finance Act 1989;
- “unrecognised capital amounts” shall be interpreted in accordance with section 83YB(3) and (4) of the Finance Act 1989⁽⁷⁾;
- “wholly attributable to policyholder tax” shall be interpreted in accordance with section 108(2) of the Finance Act 2012.

Excluded items

7.—(1) A particular item is an excluded item for the purposes of paragraph 7 of Schedule 17 if it relates to an item in any of categories 1 to 10.

- (2) Paragraph 7(6) of Schedule 17 applies to such items.

Apportionment in relation to a with-profit fund (1): category 13

8.—(1) This regulation applies to a relevant computational item which relates to category 13 to the extent that—

⁽⁶⁾ A copy of the Insurance Prudential Sourcebook can be found at www.fsa.gov.uk/handbook.

⁽⁷⁾ Section 84YB was inserted by paragraph 7(1) of Schedule 11 to the Finance Act 2006.

- (a) the amount of the entries for that category are attributable to the component amounts in categories 1, 2, 5, 7 and 8, and
 - (b) those component amounts in categories 1, 2, 5, 7 and 8 are referable to particular policies.
- (2) The relevant computational item (or part of the item) must be apportioned between the specified businesses by reference to the policies referable to each specified business to which the entries in column 1 and column 2 in the Table relate.

Apportionment in relation to a with-profit fund (2): category 15

- 9.—(1) This regulation applies to a relevant computational item which relates to a with-profit fund and is an item within category 15.
- (2) The relevant computational item must be apportioned to the business described in paragraph 8(1)(a) of Schedule 17 (basic life assurance and general annuity business).

Apportionment in relation to a with-profit fund (3)

- 10.—(1) This regulation applies to a relevant computational item which relates to a with-profit fund where neither regulation 8 or 9 applies.
- (2) Each relevant computational item must be apportioned between the specified businesses in the same proportion as the bonuses declared for that with-profit fund are referable to each of the specified businesses in respect of the accounting period ending on 31 December 2012.
- (3) But if the bonuses declared in respect of the accounting period ending on 31 December 2012—
- (a) are nil,
 - (b) are of a negligible amount by reference to the liabilities to the policyholders of the fund at that date, or
 - (c) would otherwise give a result which is not representative of the respective contribution of the specified businesses to the fund,
- the company must apportion each relevant computational item between the specified businesses in a way which fairly reflects the proportion of the fund that each of the specified businesses represents as at 31 December 2012.
- (4) Where a company is one to which paragraph 3 or paragraph 4 of Schedule 17 applies, paragraphs (2) and (3) of this regulation apply as if the references to the accounting period ending on 31 December 2012 were references to the last accounting period which ended before 31 December 2012.

Apportionment in relation to a non-profit fund: categories 11, 12, 15 and 16

- 11.—(1) This regulation applies to a relevant computational item which relates to a non-profit fund and is an item within—
- (a) category 11,
 - (b) category 12,
 - (c) category 15, or
 - (d) category 16.
- (2) Each relevant computational item must be apportioned between the specified businesses by reference to the policies referable to each specified business to which the entries in column 1 and column 2 in the Table relate.

Apportionment in relation to unrelieved FAFTS charge

12.—(1) This regulation applies to an amount treated as a relevant computational item under paragraph 16 of Schedule 17.

(2) The relevant computational item must be apportioned between the businesses described in paragraphs 8(1)(a) and (b) of Schedule 17 in the same proportion as if it was an amount to which the Financing-Arrangement-Funded Transfers to Shareholders Regulations 2008⁽⁸⁾ applied and the relevant computational item was a section 83YC(3) amount within the meaning of those Regulations.

Apportionment in relation to a non-profit fund: category 14

13.—(1) This regulation applies to a relevant computational item which relates to category 14.

(2) Each relevant computational item must be apportioned between the specified businesses as follows—

(a) a fraction equal to the applicable relevant fraction must be apportioned to the business described in paragraph 8(1)(b) of Schedule 17 (gross roll up business);

(b) a fraction equal to—

$$1 - AAF$$

must be apportioned to the business described in paragraph 8(1)(c) of Schedule 17 (PHI business), where AAF is the applicable appropriate fraction; and

(c) the remainder must be apportioned to the business described in paragraph 8(1)(a) of Schedule 17 (basic life assurance and general annuity business).

(3) The applicable relevant fraction is, on the assumptions in paragraph (5), the total of—

(a) the relevant fractions in relation to appropriate periods of account beginning on or after 9 December 2009, and

(b) the relevant fraction in relation to the last period of account beginning before 9 December 2009 where section 47(4) of the Finance Act 2010⁽⁹⁾ (apportionment of asset value increases) would apply,

weighted in accordance with the amount of the relevant computational item to which each of those fractions applies as a proportion of the total of those amounts.

(4) The applicable appropriate fraction is, on the assumptions in paragraph (5), the total of—

(a) the appropriate fractions in relation to appropriate periods of account beginning on or after 9 December 2009, and

(b) the appropriate fraction in relation to the last period of account beginning before 9 December 2009 where section 47(4) of the Finance Act 2010 (apportionment of asset value increases) would apply,

weighted in accordance with the amount of the relevant computational item to which each of those fractions applies as a proportion of the total of those amounts.

(5) The assumptions are that—

(a) section 432CA of ICTA (apportionment of asset value increase where line 51 amount decreases)⁽¹⁰⁾ applies in relation to the period of account ending on 31 December 2012,

(b) the period of account ending on 31 December 2012 is an “appropriate period of account” for the purposes of that section, and

⁽⁸⁾ S.I. 2008/1926.

⁽⁹⁾ 2010 c. 13.

⁽¹⁰⁾ “ICTA” is defined in section 228 of the Finance Act 2012 as the Income and Corporation Taxes Act 1988. Section 432CA was inserted by section 47 of the Finance Act 2010.

- (c) “the affected amount” for the purposes of that section is equal to the relevant computational item to which this regulation applies.
- (6) In this regulation—
 - “appropriate period of account” has the same meaning as in section 432CA(5) of ICTA (apportionment of asset value increase where line 51 amount decreases);
 - “the appropriate fraction” has the meaning given in section 432C(5) of ICTA (section 432B apportionment non-participating funds)(11);
 - “the relevant fraction” has the meaning given in section 432C(9) of ICTA (section 432B apportionment non-participating funds)(12).

Apportionment in relation to a non-profit fund: other categories

14.—(1) This regulation applies to a relevant computational item to which regulations 8 to 13 do not apply.

(2) Each relevant computational item must be apportioned between the specified businesses as follows—

- (a) a fraction equal to the relevant fraction calculated for the accounting period ending on 31 December 2012 in accordance with section 432C(9) of ICTA, is to be apportioned to the business described in paragraph 8(1)(b) of Schedule 17 (gross roll up business);
- (b) a fraction equal to—

$$1 - AF$$

is to be apportioned to the business described in paragraph 8(1)(c) of Schedule 17 (PHI business), where AF is the appropriate fraction calculated for the accounting period ending on 31 December 2012 in accordance with 432C(5) of ICTA; and

- (c) the remainder is to be apportioned to the business described in paragraph 8(1)(a) of Schedule 17 (basic life assurance and general annuity business).

Apportionment to BLAGAB where section 67 of Finance Act 2012 applies

15.—(1) If section 67 of the Finance Act 2012 (exception where BLAGAB small part of long-term business) (“section 67”) applies to an insurance company for the accounting period beginning on 1 January 2013, any amount that would apart from this regulation be apportioned to basic life assurance and general annuity business under these Regulations must instead be apportioned to gross roll-up business.

(2) If section 67 applies to an insurance company in a subsequent accounting period when the full amount of the receipts or expenses within paragraph 9 of Schedule 17 of the business has not been treated as arising to the company, the receipts or expenses are to continue to be dealt with in accordance with the provisions of Schedule 17 but are treated as arising for that accounting period and the remainder of the 10 year period in question as receipts or expenses within paragraph 10 of Schedule 17.

(3) But paragraph (2) does not apply if paragraph 14 of Schedule 17 applies.

Amendment to paragraph 20 of Schedule 17

16. In paragraph 20 of Schedule 17 (overseas life insurance companies)—

(11) Section 432C was substituted by paragraph 17 of Schedule 7 to the Finance Act 2007 (c. 11) and subsection (5) has been amended by paragraph 10(3) of Schedule 17 to the Finance Act 2008 (c. 9).

(12) Section 432C(9) has been amended by paragraph 10(3) of Schedule 17 to the Finance Act 2008 and by section 56(1) of the Finance Act 2011.

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- (a) in sub-paragraph (a), after “standards” insert “or the Council Directive of 19th December 1991 on the annual accounts and consolidated accounts of insurance undertakings (No [91/674/EEC](#))”, and
- (b) in sub-paragraph (b), after “statements” insert “or the technical accounts (or part of the technical accounts)”.

3rd December 2012

Desmond Swayne
David Evennett
Two of the Lords Commissioners of Her
Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 55 to 149 of, and Schedules 17 to 19 to, the Finance Act 2012 (c. 14) (“FA 2012”) establish a new regime for the taxation of insurance companies. As from 1 January 2013 the starting point for the calculation of the trading profits of insurance companies will be the statutory accounts. Schedule 17 to FA 2012 contains provisions which govern the transition from the old basis of taxation (based on the regulatory returns made to the Financial Services Authority) to the new basis. The Schedule permits HM Treasury to make further provision for the transition by way of regulations. These Regulations contain further transitional provisions.

Regulation 1 deals with citation, commencement and interpretation.

Regulation 2 gives an overview of the Regulations.

Paragraph 6 of Schedule 17 to FA 2012 explains that the difference between the amount attributed to the shareholders as at 31 December 2012 and the cumulative taxed surplus (“the total transitional difference”) is comprised of a number of particular items found by comparing amounts in the 2012 periodical return with amounts in the 2012 balance sheet and allocating a positive or negative amount to each item. Paragraph 6(3) gives HM Treasury the power to prescribe the way in which the comparison of the items must be done and to prescribe the method for making the allocation of the positive or negative amount to each item. Regulation 3 prescribes how the items that taken together result in the total transitional difference by requiring a comparison to be made between the amounts in column 1 and the amounts in column 2 of the Table in regulation 4. The regulation also prescribes how the negative or positive amount is to be allocated to each item. Regulation 5 makes provision for adjustments to amounts in the Table in certain cases. Regulation 6 defines terms used in the Table and regulation 5.

Paragraph 7 of Schedule 17 to FA 2012 states that each of the items that together constitute the total transitional difference is a relevant computational item for the purposes of Schedule 17 to FA 2012 unless it is an “excluded item”. These items are defined in paragraph 7(2)(a) to (d). In sub-paragraph (2)(e) HM Treasury is given the power to provide by way of regulations that other items are to be “excluded items” for the purposes of Schedule 17. Regulation 7 makes provision for certain items to be “excluded items” for the purposes of paragraph 7 of Schedule 17 to FA 2012. The consequence of these items being “excluded items” is that they are not relevant computational items for the purposes of Part 2 of Schedule 17 to FA 2012.

Paragraph 8 of Schedule 17 to FA 2012 requires each relevant computational item to be apportioned between the categories of businesses specified in that paragraph which were carried on by the insurance company as at 31 December 2012. In paragraph 8(2) HM Treasury is given power to make regulations apportioning the relevant computational items between the specified businesses. Regulations 8 to 10 makes provision for apportioning the relevant computational items between the categories where the item relates to a with-profit fund.

Regulations 11, 13 and 14 makes similar provision where the relevant computational item relates to a non-profit fund.

Regulation 12 makes provision in relation to items treated as relevant computational items.

Regulation 15 makes provision where relevant computational items are apportioned to basic life assurance and general annuity business where section 67 of the Finance Act 2012 (exception where BLAGAB small part of long-term business) applies.

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Regulation 16 amends paragraph 20 of Schedule 17 to the Finance Act 2012 (overseas life insurance companies) to extend the exclusion from Schedule 17 provided by that paragraph to cases where accounts are prepared under Council Directive of 19th December 1991 on the annual accounts and consolidated accounts of insurance undertakings (No 91/674/EEC).

A Tax Information and Impact Note covering this instrument was published on 6 December 2011 alongside draft clauses for the 2012 Finance Bill and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.