



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART XII

SPECIAL CLASSES OF COMPANIES AND BUSINESSES

CHAPTER I

INSURANCE COMPANIES, UNDERWRITERS AND CAPITAL REDEMPTION BUSINESS

Underwriters

450 Assessment, set-off of losses and reinsurance

- (1) Income tax, for any year of assessment, on the profits or gains arising from a member's underwriting business or from assets forming part of a premiums trust fund shall be computed on the profits or gains of that year of assessment; but for this purpose and all other purposes of the Income Tax Acts—
 - (a) the profits or gains arising in any year of assessment from a member's underwriting business shall be taken to be those arising in the corresponding underwriting year; and
 - (b) the profits or gains arising from assets forming part of a premiums trust fund shall be taken to be those allocated under the rules or practice of Lloyd's to the corresponding underwriting year.
- (2) Income tax on the profits or gains arising to a member from assets forming part of a premiums trust fund may be assessed on the underwriting agent through whom his business is carried on.
- (3) Relief under section 380 in respect of a loss sustained by a member in his underwriting business in any year of assessment shall not be given under subsection (2) of that section but may, if the member so claims and he was a member in the preceding year of assessment, be given against his income for that preceding year, so far as it cannot

be given against the income for the year in which the loss was sustained and can be given after any relief for a loss sustained in that preceding year.

- (4) In any case where a member has taken out an insurance against losses in his underwriting business—
- (a) any premium paid by him on that insurance shall be deducted as an expense in computing the profits or gains arising from that business; and
 - (b) any insurance money paid to him under that insurance shall be taken into account as a trading receipt in computing those profits or gains for the year of assessment for which the premium was allowed as a deduction.
- (5) Where, in accordance with the rules or practice of Lloyd's, and in consideration of the payment of a premium, one member agrees with another to meet liabilities arising from the latter's business for an underwriting year so that the accounts of the business for that year may be closed—
- (a) in computing for the purposes of income tax the profits or gains of his business, the amount of the premium shall be deductible as an expense of the member by whom it is payable only to the extent that it is shown not to exceed a fair and reasonable assessment of the value of the liabilities in respect of which it is payable; and
 - (b) any part of a premium which, by virtue of paragraph (a) above, is not deductible as an expense of the member by whom it is payable, shall be disregarded in computing for the purposes of income tax the profits or gains of the business of the member to whom it is payable;
- and the assessment referred to above shall be taken to be fair and reasonable only if it is arrived at with a view to producing the result that a profit does not accrue to the member to whom the premium is payable but that he does not suffer a loss.
- This subsection has effect in relation to premiums payable in connection with the closing of the accounts of a member's business for an underwriting year ending in the year of assessment 1985-86 or any later year of assessment.
- (6) The cost of acquisition and the consideration for the disposal of assets forming part of a premiums trust fund shall be left out of account in computing the profits or gains or losses of a member's underwriting business for the purposes of Schedule D (and accordingly shall not be excluded for the purposes of capital gains tax under section 31 or 33 of the 1979 Act).

451 Regulations

- (1) The Board may by regulations provide—
- (a) for the assessment and collection of tax charged in accordance with section 450;
 - (b) for modifying the provisions of section 450 in relation to syndicates continuing for more than two years after the end of an underwriting year;
 - (c) for giving credit for foreign tax.
- (2) The Treasury may by regulations modify any of the provisions specified in paragraphs (a) to (c) below in their application to companies permitted by the Council of Lloyd's to act as underwriting agents at Lloyd's—
- (a) section 11 of the Management Act (return of profits);
 - (b) section 87A of that Act (interest on overdue corporation tax); and

- (c) section 10(1) of this Act.
- (3) Regulations under subsection (2) above shall not have effect with respect to accounting periods ending on or before such day, not being earlier than 31st March 1992, as the Treasury may by order appoint for the purposes of that subsection.
- (4) Regulations made under paragraph 17(1)(b) of Schedule 16 to the Finance Act 1973 which are in force immediately before the coming into operation of this Act shall continue in force notwithstanding the repeal of that paragraph by this Act, and shall be deemed to have been made under this section.

452 Special reserve funds

- (1) If in the case of Lloyd's—
- (a) arrangements are made for the setting up in relation to each underwriting member of such a special reserve fund as is referred to in the following provisions of this section and sections 453 to 456; and
 - (b) the arrangements comply with the requirements of this section and sections 453 to 455, are approved by the Board and are certified by the Secretary of State to be in the public interest;
- then, subject to section 456(4), the provisions of this section and sections 453 to 456 relating to taxation shall have effect in relation to any underwriting member.
- (2) The arrangements must provide for the setting up, in relation to the underwriter, of a special reserve fund vested in trustees who have control over it and power to invest the capital thereof and to vary the investments.
- (3) Where part of the business of the underwriter is carried on through an underwriting agent and part is not so carried on, or where different parts of his business are carried on through different underwriting agents, the arrangements may provide for separate special reserve funds being constituted in relation to the different parts of his business.
- (4) The arrangements must provide—
- (a) for the income arising from the investments of the underwriter's special reserve fund or funds being held on trust for the underwriter, his personal representatives or assigns; and
 - (b) that, on the underwriter ceasing to carry on his business, the capital of his special reserve fund or funds, so far as not required for giving effect to the requirements of section 453, shall be paid over to the underwriter or his personal representatives or assigns.
- (5) The arrangements must be such as to secure that if, for an underwriting year corresponding to a year of assessment during the whole or any part of which the underwriter continues to carry on his business (subject to section 456(4)), the underwriter makes a profit from his business, he has the right to make, into his special reserve fund or funds, payments (“permissible payments”) the gross amount of which is not in the aggregate greater than £7,000 or 50 per cent. of the profit, whichever is the less, or such less sum as may be specified in the arrangements.
- (6) The amount of any permissible payment shall be notified to the inspector not later than 12 months after the date at which the accounts of the business for that underwriting year are deemed by the Board to be closed for the purposes of the arrangements, and no permissible payment shall be made more than 30 days after the date on which the

inspector has notified his agreement in writing or, if later, 30 days after the expiration of those 12 months.

- (7) Where the underwriter carries on his business during part only of the year of assessment referred to in subsection (5) above, the maximum gross amount of the permissible payments shall be reduced by the application thereto of the proportion which the part of that year of assessment for which he is entitled to profits from the business bears to a full year.
- (8) In subsection (5) above “profit” means a profit computed in the manner in which the profits or gains of the business of the underwriting year in question would fall to be computed under Case I of Schedule D if—
- (a) income arising from the investments forming part of the premiums trust fund of the underwriter, his special reserve fund or funds and any other fund required or authorised by the rules of Lloyd’s or required by the underwriting agent through whom the business or any part thereof is carried on, to be kept in connection with the business fell to be taken into account; and
 - (b) all shares of the profits of the business and all charges related to those profits or to the income mentioned in paragraph (a) above, being shares and charges payable to persons other than the underwriter and not otherwise taken into account, fell to be deducted.

In paragraph (a) above “income” includes annual profits or gains chargeable to tax by virtue of section 714(2) or 716(3).

453 Payments into premiums trust fund on account of losses

- (1) The arrangements must be such as to secure that, if it is certified that the underwriter has sustained a loss in his business for an underwriting year subsequent to that which corresponds to the first year of assessment to which section 452(5) applies, there shall be made into his premiums trust fund, out of the capital of his special reserve fund or funds, payments the gross amount of which is equal in the aggregate to the certified amount of the loss.
- (2) If the capital of the underwriter’s special reserve fund or funds, reduced by so much thereof as represents sums paid into it or them as a consequence of a profit for a year later than the year of the loss, is less than the net amount of the payments required to be made by subsection (1) above, those payments shall be reduced so that the net amount thereof is equal to the capital of the fund or funds as so reduced.
- (3) In this section—
- (a) “loss” means a loss computed in the manner in which the profits or gains of the business of the underwriting year in question would fall to be computed under section 452(8); and
 - (b) where, under any arrangement between the underwriter and another person which provides for the sharing of losses, any amount is paid to the underwriter by that person as that person’s share of a loss for that year, the loss (as so computed) shall be reduced by that amount.
- (4) In this section “certified” means certified by a certificate of the inspector, but—
- (a) no certificate shall be given by the inspector until 30 days have elapsed from the date on which he has given notice to the underwriter or his personal representatives stating his intention to give a certificate and stating the amount which he proposes to specify as the amount of the loss;

- (b) the underwriter or his personal representatives may, on giving notice to the inspector within that 30 day period, appeal to the Special Commissioners;
 - (c) where notice is so given by the underwriter or his personal representatives, the inspector shall not without the consent of the underwriter or his personal representatives give any certificate until after the hearing of the appeal; and
 - (d) on the hearing of the appeal, the Special Commissioners may direct the inspector not to give a certificate or to give it with such an amount specified as the amount of the loss as may be specified in the direction.
- (5) The arrangements may authorise the making of payments pursuant to subsection (1) above on a provisional basis before the amount of the loss has been finally ascertained and certified by the inspector.
- (6) The amount so withdrawn shall not exceed such proportion of the estimated loss as may be specified in the arrangements.
- (7) When the amount of the loss has been certified by the inspector such adjustments shall be made by repayment to the underwriter's special reserve fund or funds, or by further withdrawal of sums for payment into the underwriter's premiums trust fund, as will secure that the net amount withdrawn from the underwriter's special reserve fund or funds in respect of the loss is that required pursuant to subsection (1) above; and no tax consequences shall ensue on the withdrawal of sums in respect of a loss until the amount of the loss has been so certified and any such adjustments have been made.

454 Income tax consequences on payments into and out of special reserve fund

- (1) Where such a payment as is mentioned in section 452(5) is made into a special reserve fund of an underwriter by reason of the making by him of a profit for an underwriting year—
- (a) subject to subsection (2) below, the payment shall be deemed to be an annual payment chargeable to income tax by way of deduction and payable and paid in the year of assessment corresponding to that underwriting year; and
 - (b) the sum actually paid shall be deemed for the purposes of sections 452 to 456 and for all income tax purposes to be a net amount corresponding to a gross amount from which income tax has been duly deducted.
- (2) Subsection (1)(a) above—
- (a) shall not reduce any income other than income derived from the underwriter's underwriting business or from any deposit made or assets held on trust in connection with that business; and
 - (b) subject to paragraph (a) above, shall reduce income other than investment income before reducing investment income.
- (3) Where such a payment as is mentioned in section 453(1) is made out of a special reserve fund of an underwriter into a premiums trust fund of his by reason that he has sustained a loss for an underwriting year then, subject to section 453(7)—
- (a) the payment shall be deemed for all income tax purposes—
 - (i) to be an annual payment chargeable to income tax by way of deduction and paid out of profits or gains brought into charge to income tax; and
 - (ii) to have been payable and paid to the underwriter; and

Status: This is the original version (as it was originally enacted).

- (iii) to have been payable and paid to him on the last day of the year of assessment corresponding to that underwriting year or, if he ceased to carry on his business before that day, on the last day on which he carried on his business; and
 - (b) the sum actually paid shall be deemed for the purposes of sections 452 to 456 and for all income tax purposes to be a net amount corresponding to a gross amount from which income tax has been duly deducted for the year of assessment in which the payment is so deemed to have been payable and paid.
- (4) Where such a payment as is mentioned in section 453(1) is made out of a special reserve fund of an underwriter by reason that he has sustained a loss, relief in respect of the loss shall, so far as possible, be given by treating the loss as reducing the income represented by the payment.
- (5) Where the underwriter ceases to carry on his business before his death and under so much of the arrangements as gives effect to section 452(4)(b) a sum is paid to him or his personal representatives or assigns—
- (a) the payment shall be deemed for all income tax purposes—
 - (i) to be an annual payment chargeable to income tax by way of deduction and paid out of profits or gains brought into charge to income tax; and
 - (ii) to have been payable and paid to the underwriter; and
 - (iii) to have been payable and paid to him on the last day on which he carried on his business; and
 - (b) the sum actually paid shall be deemed for the purposes of sections 452 to 456 and for all income tax purposes to be a net amount corresponding to a gross amount from which income tax has been duly deducted.
- (6) Neither the arrangements, nor any disposition, trust, covenant, agreement or arrangement entered into for the purposes of the arrangements, shall be treated as included in the expression “settlement” for the purposes of Chapter III or IV of Part XV.

455 Income tax consequences on death of underwriter

- (1) In this section “the lower limit” means the limit which would be imposed by section 452(5) if the words “£5,000 or 35 per cent. of that profit, whichever is the less” stood in that subsection in place of the words “£7,000 or 50 per cent. of that profit, whichever is the less”.
- (2) Where an underwriter dies while carrying on his business and, after giving effect to the requirements of section 453, his special reserve fund or funds include an amount which represents an excess in the payments made into the fund or funds for any underwriting year over the lower limit—
- (a) he shall be deemed for all income tax purposes to have received in the year of assessment corresponding to that underwriting year a payment of that amount—
 - (i) which was an annual payment chargeable to income tax by way of deduction and paid out of profits or gains brought into charge to income tax, and
 - (ii) which was payable in the year of assessment in which it is deemed to have been paid, and

- (b) the payment (to that actual amount) shall be deemed for the purposes of sections 452 to 456 and for all income tax purposes to be a net amount corresponding to a gross amount from which tax has been duly deducted.
- (3) Where, to give effect to the requirements of section 453 as to the meeting of a loss, any withdrawal was made at any time from the capital of the underwriter's special reserve fund or funds, the amount withdrawn shall be regarded for the purposes of subsection (2) above—
- (a) as having been met out of payments made into the fund or funds for underwriting years before that in which the loss was incurred, and as having been met before any withdrawal to meet a loss for a later underwriting year; and
 - (b) as having been met out of so much of the payments made for any underwriting year as was not in excess of the lower limit, rather than out of such part of the payments made for any underwriting year as was in excess of the lower limit; and
 - (c) subject to that, as having been met out of payments in excess of the lower limit for a later year rather than out of payments in excess of the lower limit for an earlier year;

and, where payments have been made into the underwriter's special reserve fund or funds for any underwriting year in excess of the lower limit, his fund or funds shall be deemed at all subsequent times to include an amount representing that excess except to the extent that any withdrawal is, under the provisions of this subsection, to be regarded as having been met out of that amount.

- (4) Any tax chargeable by virtue of this section shall be assessed and charged upon the underwriter's personal representatives and tax so charged shall be a debt due from and payable out of his estate; and, notwithstanding section 34(1) of the Management Act (which requires assessments to be made not later than six years after the end of the year to which they relate), assessments in respect of tax so chargeable may be made at any time not later than three years after the end of the year of assessment in which the underwriter died.
- (5) References in this section to payments made into a special reserve fund or funds for any underwriting year are references to payments made, as described in section 452(5), by reference to the profits made for that underwriting year.

456 Unearned income, variation of arrangements and cancellation of approval etc

- (1) So much of an underwriter's income as is attributable to payments from his special reserve fund or to such an excess as is mentioned in section 455 shall (so far as remaining after allowing for any relief by which it is reduced) be treated as unearned income if, but only if, his income from his underwriting business falls to be so treated.
- (2) Where, as a result of a change in the circumstances in which an underwriting business is carried on, an underwriter's income from the business falls to be treated as unearned income, the change shall be disregarded for the purposes of subsection (1) above except to the extent that the special reserve fund represents payments made into it after the change; and for this purpose any amount withdrawn after the change to give effect to the requirements of section 453 shall, so far as possible and notwithstanding section 455(3), be regarded as having been met by payments into the fund made after the change.

- (3) The arrangements may from time to time be varied with the consent of the Board and the Secretary of State.
- (4) If, after giving notice of their intention so to do to the Council of Lloyd's, the Board or the Secretary of State cancel the approval or certificate which they have or he has given with respect to the arrangements, section 452(5) to (9) shall not apply, in the case of any underwriter, to any year of assessment after the year of assessment in which the approval or certificate is cancelled.

457 Interpretation of sections 450 to 456

- (1) In sections 450 to 456—
 - “arrangements” means any such arrangements as are referred to in section 452(1);
 - “business”, in relation to an underwriter, means his underwriting business as a member of Lloyd's, whether carried on personally or through an underwriting agent, and does not include any other business carried on by him, and in particular, where he is himself an underwriting agent, does not include his business as such an agent;
 - “member” means an underwriting member of Lloyd's;
 - “net amount” and “gross amount”, in relation to any payment, mean respectively the sum actually paid and the sum which, after deduction of income tax, is equal to the sum actually paid;
 - “premiums trust fund” means such a trust fund as is referred to in section 83 of the Insurance Companies Act 1982;
 - “underwriting year” means the calendar year.
- (2) For the purpose of construing any reference in sections 450 to 456 to the year of assessment which corresponds to an underwriting year or to the underwriting year which corresponds to a year of assessment, an underwriting year and a year of assessment shall be deemed to correspond to each other if the underwriting year ends in the year of assessment.