These notes refer to the Finance (No. 2) Act 2010 (c.31) which received Royal Assent on 27 July 2010

FINANCE (NO. 2) ACT 2010

EXPLANATORY NOTES

Section 9: Insurance Companies: Business Transfers Involving Excess Assets

Details of the Section

5. Subsection (1) inserts new section 432CB into Chapter 1 of Part 12 of ICTA.

6. New sections 432CB(1), (2) and (3) set out the conditions under which the provisions apply. Subsection (2) specifies that there must be an excess of the fair value of the assets transferred over the amount of the relevant liabilities transferred (this being the "chargeable excess"). It specifies the nature of the relevant liabilities by reference to the appropriate lines in Form 14 of a periodical regulatory return. The terms of subsection (1) make clear that these must be liabilities which are transferred out of a non-profit fund of the transferor into a non-profit fund of the transferee.

7. New section 432CB(4) brings the chargeable excess into account as a receipt in the transferring company under section 83(2) of FA 1989 in the form of an increase in the value of non-linked assets in the period of account ending immediately before the transfer, or if there is no such period, the period of account during which the transfer occurs.

8. New section 432CB(5) applies where the transferee company does not show an amount in line 51 of Form 14 of its periodical regulatory return for the first period of account ending on or after the transfer date. It ensures that profits are not taxed in both the transferring and recipient companies by specifying that the chargeable excess is brought into account by the recipient company as a decrease in the value of non-linked assets. The absence of an amount in line 51 of Form 14 means that recognition of the chargeable excess has not been deferred. The deemed decrease therefore has effect in the first period of account ending on or after the transfer date.

9. New section 432CB(6) applies where the transferee company does show an amount in line 51 of Form 14 of its regulatory return for the first period of account ending on or after the transfer date, and the amount shown at line 51 of the Form 14 for the first period of account ending on or after the transfer date, or for any subsequent period (known as an "affected period"), is less than the total chargeable excess amount. The existence of an amount in line 51 of Form 14 means that there has been a deferral of taxable profits. Relief is available in any affected period only to the extent that the chargeable excess has demonstrably not been deferred. So relief is restricted to the "relevant amount".

10. New section 432CB(7) defines the "relevant amount" referred to in subsection (6) as the amount by which the line 51 amount is less than the total chargeable excess amount. The total chargeable excess amount, defined in subsection (8), aggregates all chargeable excesses, where they have arisen from different transfers, so that there is only one relevant amount for any affected period.

11. New sections 432CB(10) and (11) define “the transfer scheme arrangements” referred to in the test of purpose in subsection (3) as the insurance business transfer scheme and “any relevant associated operations”, the latter term being further defined.

12. New section 432CB is aimed at companies which are not non-profit companies as defined in section 431 of ICTA. Companies may be able to elect under section 83YA(9) of FA 1989 to be treated as non-profit companies. New section 432CB(13) ensures that companies with such an election in force are regarded as non-profit companies for the purposes of new section 432CB, and therefore excluded from its scope.

13. Subsection (2) of the section sets out that the new rules introduced have effect in relation to transfers of business taking place on or after 24 March 2010.