



# Finance Act 2012

## 2012 CHAPTER 14

### PART 2

#### INSURANCE COMPANIES CARRYING ON LONG-TERM BUSINESS

### CHAPTER 1

#### INTRODUCTORY

#### *Outline of provisions of Part*

#### **55 Overview**

- (1) This Part makes special provision for corporation tax purposes in relation to life assurance business and other long-term business carried on by insurance companies.
- (2) Chapter 1 explains some of the key concepts for the purposes of this Part, including the concept of basic life assurance and general annuity business (abbreviated to “BLAGAB”).
- (3) Chapter 2—
  - (a) provides for the profits of BLAGAB to be subject to a charge to corporation tax on the I - E basis as the profits of a separate business, and
  - (b) provides for the profits of other long-term business to be charged to corporation tax under section 35 of CTA 2009 as the profits of a single trade.
- (4) Chapter 3 sets out the rules applicable to the I - E charge (which operate in part by reference to the calculation of an insurance company’s BLAGAB trade profit or loss).
- (5) Chapter 4 sets out rules for determining for the purposes of the I - E charge how to apportion items to an insurance company’s basic life assurance and general annuity business.
- (6) Chapter 5—

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- (a) provides for the policyholders' share of the I - E profit to be charged at the policyholders' rate (the basic rate of income tax), and
  - (b) provides for policyholder tax to be taken into account in calculating an insurance company's BLAGAB trade profit or loss.
- (7) Chapter 6 contains special rules that are to apply for the purpose of calculating an insurance company's BLAGAB trade profit or loss or the profits of an insurance company's other long-term business.
- (8) Chapter 7 sets out rules for determining for the purposes of that calculation how to allocate items between BLAGAB and other long-term business.
- (9) The remainder of the Part contains—
- (a) provision in relation to assets held for the purposes of an insurance company's long-term business (see Chapter 8),
  - (b) provision for relieving BLAGAB trade losses and restrictions in relation to the policyholders' share of an I - E profit (see Chapter 9),
  - (c) provision in relation to the transfer of BLAGAB or other long-term business (see Chapter 10), and
  - (d) definitions and other supplementary material (see Chapters 11 and 12).

*Meaning of “life assurance business”*

**56 Meaning of “life assurance business”**

- (1) This section defines for the purposes of this Part what is meant by “life assurance business”.
- (2) Business is “life assurance business” if—
- (a) it consists of the effecting or carrying out of contracts of insurance which fall within paragraph I, II, III or VII(b) of Part 2 of Schedule 1 to the FISMA (Regulated Activities) Order 2001, or
  - (b) it is capital redemption business (see subsection (3)).
- (3) Business is “capital redemption business” if it consists of the effecting on the basis of actuarial calculations, and the carrying out, of contracts under which, in return for one or more fixed payments, a sum of a specified amount (or a series of sums of a specified amount) become payable at a future time or over a period.

*Meaning of “basic life assurance and general annuity business”*

**57 Meaning of “basic life assurance and general annuity business”**

- (1) This section defines for the purposes of this Part what is meant by “basic life assurance and general annuity business”.
- (2) “Basic life assurance and general annuity business” means life assurance business other than—
- (a) pension business (which is defined for the purposes of this section by section 58),
  - (b) child trust fund business (which is defined for the purposes of this section by section 59),

- (c) individual savings account business (which is defined for the purposes of this section by section 60),
  - (d) business which consists of the effecting or carrying out of immediate needs annuities (within the meaning of section 725 of ITTOIA 2005),
  - (e) re-insurance of life assurance business other than excluded business,
  - (f) overseas life assurance business (which is defined for the purposes of this section by section 61), or
  - (g) protection business (which is defined for the purposes of this section by section 62).
- (3) In subsection (2)(e) “excluded business” means business of any description excluded for the purposes of this section by regulations made by HMRC Commissioners.

## **58 Section 57: meaning of “pension business”**

- (1) This section defines for the purposes of the definition of “basic life assurance and general annuity business” given by section 57 what is meant by “pension business”.
- (2) Life assurance business is “pension business” if—
  - (a) it consists of the effecting or carrying out of contracts entered into for the purposes of a registered pension scheme, or
  - (b) it is the re-insurance of business within paragraph (a).
- (3) Subsection (4) applies if the pension scheme ceases to be a registered pension scheme as a result of the withdrawal of its registration under section 157 of FA 2004.
- (4) The company’s life assurance business that was pension business when the scheme was a registered pension scheme is treated as ceasing to be pension business at the beginning of the company’s period of account in which the scheme so ceases to be a registered pension scheme.
- (5) If—
  - (a) immediately before 6 April 2006 an annuity contract fell within any of the descriptions of contracts specified in section 431B(2) of ICTA as it had effect immediately before that date, but
  - (b) the contract does not fall to be regarded for the purposes of this section as having been entered into for the purposes of a registered pension scheme,the contract is treated for the purposes of this section as having been entered into for those purposes.

## **59 Section 57: meaning of “child trust fund business”**

- (1) This section defines for the purposes of the definition of “basic life assurance and general annuity business” given by section 57 what is meant by “child trust fund business”.
- (2) Life assurance business is “child trust fund business” if it consists of the effecting or carrying out of child trust fund policies.
- (3) But the re-insurance of business consisting of the effecting or carrying out of child trust fund policies is not “child trust fund business”.

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- (4) In this section “child trust fund policy” means a policy of life insurance which is an investment under a child trust fund (within the meaning of the Child Trust Funds Act 2004).

**60 Section 57: meaning of “individual savings account business”**

- (1) This section defines for the purposes of the definition of “basic life assurance and general annuity business” given by section 57 what is meant by “individual savings account business”.
- (2) Life assurance business is “individual savings account business” if it consists of the effecting or carrying out of individual savings account policies.
- (3) But the re-insurance of business consisting of the effecting or carrying out of individual savings account policies is not “individual savings account business”.
- (4) In this section “individual savings account policy” means a policy of life insurance which is an investment of a kind specified in regulations made as a result of section 695(1) of ITTOIA 2005.

**61 Section 57: meaning of “overseas life assurance business”**

- (1) This section defines for the purposes of the definition of “basic life assurance and general annuity business” given by section 57 what is meant by “overseas life assurance business”.
- (2) Life assurance business is “overseas life assurance business” if—
- (a) it consists of the effecting or carrying out of contracts with policyholders or annuitants who are not resident in the United Kingdom, and
  - (b) it does not consist of excluded business,
- but the re-insurance of business that meets the conditions in paragraphs (a) and (b) is not “overseas life assurance business”.
- (3) For this purpose “excluded business” means—
- (a) business which is pension business within the meaning of section 58,
  - (b) business which is child trust fund business within the meaning of section 59,
  - (c) business which is individual savings account business within the meaning of section 60, or
  - (d) business of any description excluded by regulations made by HMRC Commissioners.
- (4) HMRC Commissioners may by regulations—
- (a) make provision as to the circumstances in which a trustee who is a policyholder or annuitant residing in the United Kingdom is to be treated for the purposes of this section as not residing there, and
  - (b) provide that nothing in Chapter 9 of Part 4 of ITTOIA 2005 is to apply to a policy or contract which constitutes overseas life assurance business as a result of provision made under paragraph (a).
- (5) HMRC Commissioners may by regulations make provision for giving effect to this section.
- (6) Regulations under subsection (5) may—

- (a) provide that, in prescribed circumstances, any prescribed issue as to whether business is, or is not, overseas life assurance business (or overseas life assurance business of a particular kind) is to be determined by reference to prescribed matters,
  - (b) require companies to obtain certificates, undertakings, information or declarations from any person for the purposes of the regulations,
  - (c) make provision for dealing with cases where any issue within paragraph (a) is (for any reason) wrongly determined, including provision allowing for charges to tax to be imposed (with or without limits on time) on the insurance company concerned or on the policyholders or annuitants concerned,
  - (d) require companies to supply information and make available books, documents and other records for inspection by officers of Revenue and Customs, and
  - (e) make provision (including provision imposing penalties) for contravention of, or non-compliance with, the regulations.
- (7) The matters that may be prescribed under subsection (6)(a) include—
- (a) the giving of certificates or undertakings,
  - (b) the giving or possession of information, and
  - (c) the making of declarations.
- (8) Regulations under this section may—
- (a) make different provision for different cases or circumstances, and
  - (b) contain incidental, supplementary, consequential, transitional, transitory or saving provision (including provision amending any enactment or instrument made under any enactment).

## **62 Section 57: meaning of “protection business”**

- (1) This section defines for the purposes of the definition of “basic life assurance and general annuity business” given by section 57 what is meant by “protection business”.
- (2) Life assurance business is “protection business” if it consists of the effecting or carrying out of any contract of long-term insurance in relation to which the following conditions are met—
- (a) the benefits payable cannot exceed the amount of premiums paid except on death or in respect of incapacity due to injury, sickness or other infirmity, and
  - (b) the contract is made on or after 1 January 2013.
- (3) For the purposes of subsection (2)(a) ignore—
- (a) any benefit (other than a payment of money) that, when the contract is entered into, is provided as an inducement for entering into the contract and that is not repayable (to any extent) in any circumstances,
  - (b) any case where the amount by which the benefits can exceed the amount of premiums paid is an insignificant proportion of those premiums, and
  - (c) any case which a reasonable person, as the policyholder under the policy effected by the contract, can reasonably regard as highly unlikely to arise.
- (4) If at any time—
- (a) a contract is varied otherwise than as a result of the operation of, or the exercise of rights conferred by, provisions forming part of the contract or a connected arrangement, and

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- (b) as a result of the variation the contract becomes, or ceases to be, one in respect of which the condition in subsection (2)(a) is met,

the contract is to be treated for the purposes of this section as ending at that time and a new contract (on the varied terms) is to be treated for those purposes as being made immediately after that time.
- (5) For this purpose a “connected arrangement”, in relation to a contract, means any agreement or other arrangement entered into in connection with the making of the contract.
- (6) If—
  - (a) a contract (“the new contract”) is made on or after 1 January 2013 as a result of the operation of, or the exercise of rights conferred by, provisions of a contract (“the old contract”) made before that date, and
  - (b) the provisions of the new contract were (or could have been) determined by reference to provisions of the old contract when the old contract was made,

the new contract is to be regarded for the purposes of this section as if it were made before 1 January 2013.

*Meaning of “long-term business” and “PHI business”*

**63 Meaning of “long-term business” and “PHI business”**

- (1) For the purposes of this Part “long-term business” means—
  - (a) life assurance business, or
  - (b) other business which consists of the effecting or carrying out of contracts of long-term insurance.
- (2) For the purposes of this Part “PHI business” means the other business mentioned in subsection (1)(b).

*Meaning of contract of “insurance” or “long-term insurance” and “insurance company”*

**64 Meaning of “contract of insurance” and “contract of long-term insurance”**

For the purposes of this Part—

“contract of insurance” has the meaning given by article 3(1) of the FISMA (Regulated Activities) Order 2001, and

“contract of long-term insurance” means a contract which falls within Part 2 of Schedule 1 to that Order.

**65 Meaning of “insurance company”**

- (1) This section defines for the purposes of this Part what is meant by an “insurance company”.
- (2) A person who carries on the activity of effecting or carrying out contracts of insurance is an “insurance company” if—
  - (a) the person has permission under Part 4 of FISMA 2000 to carry on that activity,

- (b) the person is of the kind mentioned in paragraph 5(d) or (da) of Schedule 3 to FISMA 2000 (EEA passport rights) and carries on that activity in the United Kingdom through a permanent establishment there, or
  - (c) the person qualifies for authorisation under Schedule 4 to FISMA 2000 (Treaty rights) and carries on that activity in the United Kingdom through a permanent establishment there.
- (3) The above definition is subject to the following qualifications—
  - (a) a friendly society within the meaning of Part 3 is not an insurance company, and
  - (b) an insurance special purpose vehicle (see section 139) is an insurance company only if, in addition to falling within subsection (2)(a), (b) or (c), it is a BLAGAB group re-insurer.
- (4) A person is a “BLAGAB group re-insurer” if for an accounting period—
  - (a) the person carries on basic life assurance and general annuity business,
  - (b) it is not the case that substantially all of the person’s long-term business is long-term business other than basic life assurance and general annuity business, and
  - (c) all of its life assurance business is re-insurance business of a description which is excluded business for the purposes of section 57(2)(e).