

1999 No. 1408

INCOME TAX

**The Non-resident Companies (General Insurance Business)
Regulations 1999**

<i>Made - - - -</i>	<i>20th May 1999</i>
<i>Laid before the House of Commons</i>	<i>20th May 1999</i>
<i>Coming into force</i>	<i>10th June 1999</i>

The Treasury, in exercise of the powers conferred on them by sections 444BB(5), 444BD(1), (4) and (5), 755B(5) and 755C of the Income and Corporation Taxes Act 1988(a), hereby make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Non-resident Companies (General Insurance Business) Regulations 1999 and shall come into force on 10th June 1999.

(2) These Regulations have effect with respect to any appropriate accounting period of a relevant company.

Interpretation

2.—(1) In these Regulations unless the context otherwise requires—

“appropriate accounting period” means an accounting period ending on or after 1st July 1999;

“controlled foreign company” shall be construed in accordance with section 747(2);

“general insurance business” has the meaning given by section 755B(6);

“non-resident company” means a company resident outside the United Kingdom;

“relevant company” means a company resident in the United Kingdom that had a relevant interest in a non-resident company at any time during an accounting period of the non-resident company ending in an appropriate accounting period of the relevant company;

“relevant interest” shall be construed in accordance with section 752A(b) on the assumption that the non-resident company is a controlled foreign company;

“the Taxes Act” means the Income and Corporation Taxes Act 1988.

(2) In these Regulations references to a particular provision, without more, are references to that provision of the Taxes Act.

Modifications of Chapter IV of Part XVII of the Taxes Act

3. Chapter IV of Part XVII of the Taxes Act(c) shall have effect with the modifications prescribed in regulations 4 to 6 in any case where a non-resident company—

(a) 1988 c. 1. Sections 444BA to 444BD were inserted by paragraph 1 of Schedule 32 to the Finance Act 1996 (c. 8). Sections 755B and 755C were inserted by paragraphs 14 and 15 of Schedule 17 to the Finance Act 1998 (c. 36).

(b) Sections 752 to 752C were substituted for section 752 of the Taxes Act by paragraph 7 of Schedule 17 to the Finance Act 1998.

(c) Chapter IV of Part XVII was amended by Schedule 17 to the Finance Act 1998.

- (a) carries on general insurance business, and
- (b) draws up accounts relating to that business using a method falling within subsection (2) of section 755B.

4. After section 754A(a) there shall be inserted—

“Returns where it is not established whether a non-resident company carrying on general insurance business is a controlled foreign company

754AA.—(1) This section applies where—

- (a) if an apportionment were made in accordance with section 747 of the chargeable profits for an accounting period of a company resident outside the United Kingdom (“the non-resident company”), a company resident in the United Kingdom (“the UK company”) would be chargeable to tax by virtue of subsection (5) of that section with reference to the whole or a part of the non-resident company’s chargeable profits for that accounting period (“the relevant accounting period”);
- (b) the non-resident company carries on general insurance business within the meaning given by section 755B(6) and draws up accounts relating to that business using a method falling within section 755B(2);
- (c) the UK company delivers a company tax return for the accounting period in which the relevant accounting period of the non-resident company ends; and
- (d) at the time when the UK company delivers the company tax return for that accounting period, it is not established whether in the relevant accounting period the non-resident company is subject to a lower level of taxation in the territory in which it is resident so as to constitute a controlled foreign company.

(2) Prior to delivering its company tax return for the accounting period mentioned in paragraph (1)(c), the UK company shall consider whether or not the non-resident company is likely, in the relevant accounting period, to be subject to a lower level of taxation in the territory in which it is resident so as to constitute a controlled foreign company.

(3) If the UK company is of the opinion that in the relevant accounting period the non-resident company is likely to be subject to a lower level of taxation in the territory in which it is resident so as to constitute a controlled foreign company, the UK company shall make the company tax return on the basis that the relevant accounting period is an accounting period of a company which is a controlled foreign company.

(4) If the UK company is of the opinion that in the relevant accounting period the non-resident company is not likely to be subject to a lower level of taxation in the territory in which it is resident so as to constitute a controlled foreign company, the UK company shall make the company tax return on the basis that the relevant accounting period is an accounting period of a company which is not a controlled foreign company.

(5) In any case where—

- (a) the UK company makes the company tax return on the basis mentioned in subsection (3) above, but
- (b) it becomes established that in the relevant accounting period the non-resident company is not subject to a lower level of taxation in the territory in which it is resident,

the UK company shall amend the company tax return on the basis that the relevant accounting period is an accounting period of a company which is not a controlled foreign company.

(6) In any case where—

- (a) the UK company makes the company tax return on the basis mentioned in subsection (4) above, but
- (b) it becomes established that in the relevant accounting period the non-resident company is subject to a lower level of taxation in the territory in which it is resident,

(a) Section 754A was inserted by paragraph 10 of Schedule 17 to the Finance Act 1998.

the UK company shall amend the company tax return on the basis that the relevant accounting period is an accounting period of a company which is a controlled foreign company.

(7) Any amendment required to be made to the company tax return by virtue of subsection (5) or (6) above shall be made by the UK company before the expiration of the period commencing immediately following the close of the underwriting year and ending on the date which is eighteen months plus thirty days thereafter.

(8) Subject to subsection (9) below, an amendment of a company tax return in accordance with subsection (7) above is subject to, and must be in accordance with, the other provisions of the Corporation Tax Acts as they apply for the purposes of this Chapter.

(9) The time limits otherwise applicable to amendment of a company tax return do not apply to an amendment of a company tax return in accordance with subsection (7) above.

(10) A company which fails to make an amendment required by subsection (6) above in accordance with subsection (7) above shall be liable to a tax-related penalty under paragraph 20 of Schedule 18 to the Finance Act 1998 (penalty, not exceeding amount of tax understated, for incorrect or uncorrected return).

(11) In subsection (7) above “the close of the underwriting year” means—

- (a) the date on which final replacement of the technical provision, as described in sub-paragraph (4) of paragraph 52 of Schedule 9A to the Companies Act 1985^(a), takes place, or
- (b) where there is no final replacement of the technical provision in the three years following the underwriting year, the date referred to in section 755B(4), that is, the end of the third year following the underwriting year.”

5.—(1) Section 755B shall be modified as follows.

(2) After subsection (4) there shall be inserted—

“(4A) Where in accordance with subsection (4) above the technical provision is treated as finally replaced by a provision for estimated claims outstanding (“the deemed provision”), the amount of the deemed provision which may be deducted from the chargeable profits of the controlled foreign company for the accounting period concerned shall not exceed the amount that, on the assumptions in Schedule 24, would have been deductible from those profits if the deemed provision had been an actual provision as mentioned in subsection (2)(a) above.”

6.—(1) Paragraph 2 of Schedule 25^(b) shall be modified as follows.

(2) In sub-paragraph (1), in each of paragraphs (b) and (d) there shall be inserted at the beginning “subject to sub-paragraphs (1AA) to (1AC) below,”.

(3) After sub-paragraph (1) there shall be inserted—

“(1AA) Sub-paragraph (1AB) below applies where, in a case to which section 754AA (1) applies—

- (a) a company resident in the United Kingdom (“the UK company”) either—
 - (i) has made a company tax return for an accounting period on the basis mentioned in section 754AA(3), that is, that an accounting period of a non-resident company (“the relevant accounting period”) ending in the accounting period of the UK company for which the company tax return is made is an accounting period of a controlled foreign company, and has not subsequently been required to amend the company tax return in accordance with section 754AA(5) on the basis that the relevant accounting period of the non-resident company is an accounting period of a company which is not a controlled foreign company, or

^(a) 1985 c. 6; Schedule 9A was inserted by S.I. 1993/3246.

^(b) Paragraph 2(1) of Schedule 25 was amended by section 67(3)(a) and (b) of, and Part IV of Schedule 19 to, the Finance Act 1990 (c. 29), section 134(2) of, and Part V(15) of Schedule 26 to, the Finance Act 1994 (c. 9), and section 182 of, and paragraph 4(2) of Schedule 36 to, the Finance Act 1996.

- (ii) has made a company tax return for an accounting period on the basis mentioned in section 754AA(4), that is, that the relevant accounting period of a non-resident company is an accounting period of a company which is not a controlled foreign company, but has subsequently amended the company tax return in accordance with section 754AA(6) to (8) on the basis that the relevant accounting period of the non-resident company is an accounting period of a controlled foreign company; and
- (b) the final replacement of the technical provision in the accounts of the non-resident company for the relevant accounting period–
 - (i) takes place on a date falling within the period of three years (“the three year period”) following the relevant accounting period, or
 - (ii) where no final replacement of the technical provision takes place in the three year period, is treated by virtue of section 755B(4) as having taken place on the date that is the end of that period,
 and each of those dates is referred to in sub-paragraphs (1AB), (1AD) and (1AE) below as “the close of the underwriting year”.

(1AB) Where this sub-paragraph applies–

- (a) the dividend referred to in sub-paragraph (1) above shall be due on or before the date which is eighteen months after the close of the underwriting year, or on or before such later date as the Board may, in any particular case, allow;
- (b) the amount of the dividend or, if there is more than one, of the aggregate of those dividends which is paid to persons resident in the United Kingdom is the aggregate of the following amounts–
 - (i) an amount equal to 90 per cent. of the company’s net chargeable profits for the relevant accounting period or, where sub-paragraph (4) or (5) below applies, of the appropriate portion of those profits, and
 - (ii) in respect of each dividend that is paid to persons resident in the United Kingdom later than the date which is eighteen months after the end of the relevant accounting period, an amount calculated at the date of the dividend concerned in accordance with the formula–

$$\frac{D \times i}{(1 + i)}.$$

(1AC) In sub-paragraph (1AB) above–

- (a) D is the amount of the dividend concerned, and
- (b) “i” is the interest factor calculated in accordance with the rates applicable under section 178 of the Finance Act 1989^(a) to section 87A of the Management Act^(b) from the date that is eighteen months after the end of the relevant accounting period until the date of payment of that dividend.

(1AD) Where–

- (a) sub-paragraphs (1AA) to (1AC) above apply in relation to an accounting period of the UK company,
- (b) the UK company has made a company tax return for that accounting period on the basis that the dividend referred to in sub-paragraph (1) above will be paid to persons resident in the United Kingdom not later than the date which is eighteen

^(a) 1989 c. 26; section 178(2)(f) was amended by paragraph 44 of Schedule 19 to the Finance Act 1994.
^(b) 1970 c. 9; section 87A was inserted by section 85 of the Finance (No. 2) Act 1987 (c. 51), and the inserted section was amended by paragraph 10(4) of Schedule 29 to the Income and Corporation Taxes Act 1988, section 179(1)(b) of the Finance Act 1989 (c. 26), paragraph 2(9) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12), paragraph 4 of Schedule 14 and paragraph 1 of Schedule 18 to the Finance Act 1993 (c. 34), paragraph 24 of Schedule 19 to the Finance Act 1994, paragraphs 8 and 9 of Schedule 24 to the Finance Act 1995 (c. 4), and paragraph 1 of Schedule 14 to the Finance Act 1996.

months after the close of the underwriting year or not later than the date allowed by the Board as mentioned in sub-paragraph (1AB)(a) above, and

(c) that dividend is not paid on or before that date,

the UK company shall amend the company tax return so as to record that the controlled foreign company has not pursued an acceptable distribution policy in respect of the relevant accounting period.

(1AE) An amendment required to be made to the company tax return by virtue of sub-paragraph (1AD) above shall be made by the UK company before the expiration of the period of thirty days next following the date which is eighteen months after the close of the underwriting year or next following the date allowed by the Board as mentioned in sub-paragraph (1AB)(a) above.

(1AF) A company which fails to make an amendment required by sub-paragraph (1AD) above before the expiry of the period specified in sub-paragraph (1AE) above shall be liable to a tax-related penalty under paragraph 20 of Schedule 18 to the Finance Act 1998.”

Amendments to the Insurance Companies (Reserves) (Tax) Regulations 1996

7.—(1) The Insurance Companies (Reserves) (Tax) Regulations 1996(a) shall be amended as follows.

(2) In regulation 8(1) there shall be inserted at the beginning “Subject to regulation 8B,”.

(3) After regulation 8 there shall be inserted—

“Certain insurance business carried on outside the United Kingdom by a controlled foreign company—non-annual accounts but returns prepared on an annual basis

8A.—(1) Subject to regulation 8B, this regulation applies in any case where—

- (a) paragraphs (1) and (2) of regulation 8 apply in respect of an accounting period of a controlled foreign company,
- (b) the statutory accounts drawn up by the controlled foreign company for that period use a paragraph 52 method of accounting on a non-annual basis, but
- (c) returns of chargeable profits of that company for that period are based on accounts prepared on an annual basis.

(2) Paragraph (3) of regulation 8 shall apply in relation to this regulation as it applies in relation to that regulation.

(3) Section 444BA shall have effect, subject to the modifications specified in paragraph (5) of regulation 8 and in paragraph (4) of this regulation, in relation to the equalisation reserve included in the statutory accounts as it has effect in relation to equalisation reserves maintained by virtue of section 34A regulations(b).

(4) The operation of paragraphs (a) and (b) of subsection (2) of section 444BA shall be modified so as to provide that, for the purposes of the Tax Acts, the amounts which are transferred into or out of the equalisation reserve in respect of the controlled foreign company’s business for the accounting period in question shall be the amounts which would have been transferred into or out of the equalisation reserve if the company had been required to maintain an equalisation reserve by reference to accounts prepared on an accident year basis.

(5) The reference in paragraph (1)(c) to accounts prepared on an annual basis shall be construed in accordance with regulation 5(3).

(6) The reference in paragraph (4) to accounts prepared on an accident year basis shall be construed in accordance with regulation 5(4).

(a) S.I. 1996/2991.

(b) Section 34A of the Insurance Companies Act 1982 (c. 50) was inserted by section 1 of the Insurance Companies (Reserves) Act 1995 (c. 29).

Disapplication of regulations 8 and 8A where controlled foreign company prepares non-annual accounts and final replacement of the technical provision does not take place in conformity with the Companies Act

8B. Regulations 8 and 8A shall not apply in any case where for an accounting period a controlled foreign company—

- (a) draws up its statutory accounts for that period using a paragraph 52 method of accounting on a non-annual basis, and
- (b) the final replacement of the technical provision, as described in sub-paragraph (4) of that paragraph, does not take place on or before the end of the year referred to in that sub-paragraph as the third year following the underwriting year.”

20th May 1999

Jim Dowd
Jane Kennedy
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations modify the effect of Chapter IV of Part XVII of the Income and Corporation Taxes Act 1988 (controlled foreign companies) (“Chapter IV”). The modifications relate to companies resident outside the United Kingdom which carry on general insurance business and draw up accounts relating to that business on a non-annual basis (“relevant foreign companies”), being companies in which companies resident in the United Kingdom (“United Kingdom companies”) have a relevant interest within the meaning of section 752A of the 1988 Act (inserted by paragraph 7 of Schedule 17 to the Finance Act 1998 (c. 36)).

The Regulations also amend the Insurance Companies (Reserves) (Tax) Regulations 1996 (S.I. 1996/2991) (“the 1996 Regulations”) so as to provide for the tax treatment of equalisation reserves maintained by controlled foreign companies which are relevant foreign companies.

The Regulations have effect in relation to accounting periods of United Kingdom companies ending on or after 1st July 1999 (the day appointed for the purposes of corporation tax self assessment).

Regulation 1 provides for commencement, citation and effect, and regulation 2 for interpretation.

Regulation 3 provides that Chapter IV shall have effect in relation to relevant foreign companies with the modifications prescribed by regulations 4 to 6.

Regulation 4 inserts a new section 754AA in Chapter IV so as to make provision in relation to details required to be included in company tax returns of United Kingdom companies in circumstances where it is not clear at the time the return is made whether a relevant foreign company controlled by the United Kingdom company is a controlled foreign company within the meaning of Chapter IV in the accounting period concerned.

Regulation 5 inserts a new subsection (4A) in section 755B of the 1988 Act (inserted in Chapter IV by paragraph 14 of Schedule 17 to the Finance Act 1998) which provides, in relation to accounts prepared on a non-annual basis of a controlled foreign company that is a relevant foreign company, that the amount of the deemed replacement provision under subsection (4) of section 755B that may be deducted from the chargeable profits of the relevant foreign company shall not exceed the amount that would have been deductible from those profits if the deemed provision had been an actual provision as mentioned in subsection (2)(a) of section 755B.

Regulation 6 modifies paragraph 2 of Schedule 25 to the 1988 Act (acceptable distribution policy) so as to provide for conditions to be satisfied by a controlled foreign company that is a relevant foreign company in order that the company may qualify as one pursuing an acceptable distribution policy for the purposes of Chapter IV. The conditions are that the final replacement of the technical provision in the accounts of the company takes place not later than the end of the third year following the relevant underwriting year of the company (“the close of the underwriting year”), and that the company pays a dividend in the amount specified in the modifying provision and pays that amount not later than eighteen months after the close of the underwriting year or such later time as the Board of Inland Revenue allow. The modifications of paragraph 2 of Schedule 25 also provide, that where the dividend is not paid to the United Kingdom company concerned on or before the due date, the United Kingdom company is required to amend its company tax return so as to record that the controlled foreign company has not pursued an acceptable distribution policy for the accounting period concerned.

Regulation 7 amends regulation 8 of, and inserts regulations 8A and 8B in, the Insurance Companies (Reserves) (Tax) Regulations 1996 (S.I. 1996/2991). The inserted regulation 8A provides for the tax treatment of reserves equivalent to equalisation reserves in the accounts of controlled foreign companies that are relevant foreign companies in any case where, although the company’s statutory accounts are drawn up on a non-annual basis, its returns of chargeable profits are based on accounts prepared on an annual basis. Regulations 8 and 8A are both expressed to be subject to regulation 8B which disapplies regulations 8 and 8A in any case where the final replacement of the technical provision in the accounts of the controlled foreign company does not take place on or before the third anniversary of the end of the accounting period concerned.

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