
STATUTORY INSTRUMENTS

2000 No. 2089

INCOME TAX

The Insurance Companies (Overseas Life Assurance Business) (Excluded Business) Regulations 2000

<i>Made</i>	- - - -	<i>1st August 2000</i>
<i>Laid before the House of Commons</i>	- - - -	<i>1st August 2000</i>
<i>Coming into force</i>	- -	<i>22nd August 2000</i>

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by section 431D of the Income and Corporation Taxes Act 1988(1), hereby make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Insurance Companies (Overseas Life Assurance Business) (Excluded Business) Regulations 2000 and shall come into force on 22nd August 2000.

(2) These Regulations shall have effect in relation to policies or contracts made by an insurance company on or after 22nd August 2000.

Interpretation

2.—(1) In these Regulations—

“beneficiary” means any person who is, or will or may become, entitled to any benefit under a trust, including—

- (a) any person who may become so entitled on the exercise of a discretion; and
- (b) a settlor who has an interest in the trust property for the purpose of section 660A(2);

“the Board” means the Commissioners of Inland Revenue;

“charity” means a person or body of persons established for charitable purposes only;

“collective investment scheme” has the meaning given by section 75 of the Financial Services Act 1986(3);

“discretionary trust” means any trust under which—

(1) 1988 c. 1; section 431D, together with sections 431A to C, 431E and 431F, was inserted by paragraph 2 of Schedule 8 to the Finance Act 1995 (c. 4), and was amended by section 108(1) and (2) of the Finance Act 2000 (c. 17).
(2) Inserted, together with sections 660B to 660G, by paragraph 1 of Schedule 17 to the Finance Act 1995.
(3) 1986 c. 60; section 75 was amended by S.I.1990/349, Article 6, 1996/2996, Article 3(1), and 1997/32, Article 2(1).

- (a) the income arising to the trustees is to be accumulated and no person other than the trustees is entitled to that income before it is distributed; or
- (b) the beneficiaries may become entitled to a benefit on the exercise of a discretion (whether or not the trustees have power to accumulate income) and no person is entitled to any benefit before the exercise of that discretion;

“holding company” means a company whose assets all, or all but an insignificant part, consist of shares in companies which, for the purposes of the Tax Acts, are deemed to be its 51 per cent. subsidiaries by virtue of section 838;

“investment company” means any company whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived therefrom, but excludes any holding company or collective investment scheme;

“relevant former employees” means—

- (a) former employees of a policy holder or annuitant; or
- (b) former employees of a person connected with a policy holder or annuitant; or
- (c) former employees in respect of whose employment there is established a superannuation fund to which section 615(3) applies; and, for the purpose of paragraph (b), whether a person is connected with a policy holder or annuitant shall be determined in accordance with section 839;

“relevant overseas employees” means persons who are not residing in the United Kingdom and are—

- (a) employees of a policy holder or annuitant; or
- (b) employees of a person connected with a policy holder or annuitant; or
- (c) employees in respect of whose employment there is established a superannuation fund to which section 615(3) applies; and, for the purpose of paragraph (b), whether a person is connected with a policy holder or annuitant shall be determined in accordance with section 839(4);

“settlor” means the person, or each of the persons, by whom the trust was directly or indirectly created, and for this purpose a person shall, in particular, be regarded as having created a trust if he provided or undertook to provide funds directly or indirectly for the purposes of the trust, or made with any other person a reciprocal arrangement for that other person to create the trust;

“term assurance business” means life assurance business in relation to which the policy or contract, or the underlying policy, is one which—

- (a) is for a specified term; and
- (b) is not capable of acquiring a surrender value that exceeds the amount of premiums paid.

(2) In these Regulations any reference to a particular provision, without more, is a reference to that provision of the Income and Corporation Taxes Act 1988.

Life assurance business excluded from section 431D

3.—(1) Subject to paragraph (2), life assurance business is excluded from section 431D (meaning of “overseas life assurance business”) if it is of a description that does not fall within any of the circumstances set out in regulations 4 to 7.

(2) Where a policy or contract for business is owned by two or more policy holders or annuitants who do not hold the policy or contract as trustees of the same trust, the business is excluded from

section 431D where, if any of the policy holders or annuitants were the only policy holder or annuitant, paragraph (1) would exclude it from that section.

Circumstances where business not excluded from section 431D

4. The circumstances set out in this regulation are where—
- (a) the business is with a policy holder or annuitant who—
 - (i) is not a company, or
 - (ii) is a company which holds the policy or contract for the business in a fiduciary or representative capacity;
 - (b) the rights conferred by the policy or contract for the business are not held subject to a trust; and
 - (c) not less than 65 per cent. of any benefit under the policy or contract for the business is payable to—
 - (i) persons residing outside the United Kingdom; and
 - (ii) charities.

- 5.—(1) The circumstances set out in this paragraph are where—
- (a) the rights conferred by the policy or contract for the business are held subject to a trust;
 - (b) in the case of a discretionary trust, each beneficiary is either an individual not residing in the United Kingdom or a charity; and
 - (c) in the case of a non-discretionary trust, beneficiaries who are—
 - (i) not residing in the United Kingdom, or
 - (ii) charities,have an interest in not less than 65 per cent. of the capital of the trust;

(2) For the purposes of paragraph (1)(b), an individual who, as a trustee of any trust, is a beneficiary under the trust referred to in paragraph (1)(a) shall not be regarded as an individual.

- 6.—(1) The circumstances set out in this paragraph are where—
- (a) the business is with a policy holder or annuitant which—
 - (i) is a company, and
 - (ii) does not hold the policy or contract for the business in a fiduciary or representative capacity;
 - (b) in a case where the company is an investment company which is not controlled, or is not treated as controlled, by the trustees of any trust, the company is not controlled, or is not treated as controlled, by persons residing in the United Kingdom; and
 - (c) in a case where the company is an investment company which is controlled, or is treated as controlled, by the trustees of any trust, the business would, if the trustees were the policy holders or the annuitants, be of a description falling within the circumstances set out in regulation 5.

(2) For the purposes of paragraph (1)(b), whether a company is not controlled, or is not treated as controlled, by persons residing in the United Kingdom shall be determined in accordance with section 416 but as if in subsection (6) of that section the words “five or fewer participators” read “persons residing in the United Kingdom”.

(3) For the purposes of paragraph (1)(c), whether a company is controlled, or is treated as controlled, by the trustees of any trust shall be determined in accordance with section 416 but as if in subsection (6) of that section the words “five or fewer participators” read “the trustees of any trust”.

7. The circumstances set out in this regulation are where—

- (a) the business is term assurance business; or
- (b) the policy or contract for the business is held for the purposes of, or in connection with, a scheme where the Board—
 - (i) have approved schemes of the same class or description for the purposes of the Income Tax (Pension Funds Pooling Schemes) Regulations 1996⁽⁵⁾; or
 - (ii) have been satisfied that schemes of the same class or description are such as are mentioned in section 596(2)(b); or
- (c) the policy or contract for the business is held solely to provide benefits for or in respect of—
 - (i) persons all, or all but an insignificant number, of whom are relevant overseas employees or relevant former employees, or
 - (ii) spouses, widows, widowers, children or dependants of such persons.

Trustees residing in the United Kingdom

8.—(1) A trustee who is a policy holder or annuitant residing in the United Kingdom shall be treated for the purposes of section 431D as not so residing where the policy or contract for the business is held for the purposes set out in regulation 7(b) or (c).

(2) Nothing in Chapter II of Part XIII of the Income and Corporation Taxes Act 1988 shall apply to a policy or contract which—

- (a) constitutes overseas life assurance business by virtue of paragraph (1), and
- (b) is held for the purposes set out in regulation 7(b).

*Tim Flesher
Ann Chant*

1st August 2000

Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 431D of the Income and Corporation Taxes Act 1988 (c. 1) (“section 431D”) defines “overseas life assurance business”. Subsection (1) of section 431D, as amended by section 108(1) of the Finance Act 2000 (c. 17), provides that “overseas life assurance business” does not include pension business, life reinsurance business or business of any description excluded from section 431D by regulations. These Regulations set out the business which is so excluded.

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

Regulation 3(1) provides that life assurance business is excluded from section 431D if it is of a description that does not fall within any of the circumstances set out in regulations 4 to 7. Regulation 3(2) sets out a special rule relating to exclusion from section 431D where the policy or contract for the business is owned by two or more policy holders who do not hold the policy or contract as trustees of the same trust.

Regulations 4 to 7 set out the circumstances where business is not excluded from section 431D.

Regulation 8 provides for certain trustees who are policy holders or annuitants residing in the United Kingdom to be treated for the purposes of section 431D as not so residing. The regulation provides also for nothing in Chapter II of Part XIII of the Income and Corporation Taxes Act 1988 to apply to certain policies or contracts constituting overseas life assurance business as a result.