STATUTORY INSTRUMENTS

2010 No. 2932

CORPORATION TAX

The Insurance Companies (Calculation of Profits: Policy Holders' Tax) (Amendment) Regulations 2010

Made - - - -	*8th December 2010*
Laid before the House of Commons	*9th December 2010*
Coming into force - -	*31st December 2010*

The Treasury make the following Regulations in exercise of the powers conferred by section 82A of the Finance Act 1989(**a**).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Insurance Companies (Calculation of Profits: Policy Holders' Tax) (Amendment) Regulations 2010 and shall come into force on 31st December 2010.

(2) These Regulations shall have effect in relation to periods of account ending on or after the date on which these Regulations come into force.

Amendment of the Insurance Companies (Calculation of Profits: Policy Holders' Tax) Regulations 2003

2. The Insurance Companies (Calculation of Profits: Policy Holders' Tax) Regulations 2003(**b**) are amended as follows.

Amendment of regulation 2 (calculation of profits: policy holders' tax)

3. In regulation 2(a) after "regulation 3" insert "or 3A".

Amendment of regulation 3

4. In regulation 3 at the end as a new paragraph insert—

> "This regulation does not apply for a period of account in which there has been a substantial change in the business of the company, except to the extent permitted by regulation 3A(2)(a), or for any subsequent period of account.".

Insertion of regulation 3A

5. After regulation 3 insert—

(**a**) 1989 c. 26; section 82A was inserted by section 170 of and paragraph 1 of Schedule 33 to the Finance Act 2003 (c. 14).
(**b**) SI 2003/2082, amended by SI 2008/1906.

“Basis of deduction following a substantial change in the business of a company

3A.—(1) This regulation applies for the purposes of regulation 2 where there has been a substantial change in the long-term business of a company.

(2) Where the change occurred or occurs on or before 31st December 2010—

(a) in the first period of account ending on or after 31st December 2010 the basis of deduction is either—

(i) the basis specified in regulation 3; or

(ii) such other basis to determine the amount of tax expended on behalf of policy holders or annuitants as is just and reasonable; and

(b) for any subsequent period of account, the basis of deduction is such basis to determine the amount of tax expended on behalf of policy holders or annuitants as is just and reasonable.

(3) Where the change occurs in a period of account beginning on or after 1st January 2011, the basis of deduction to be used in relation to the period of account in which the change occurs and in relation to each subsequent period of account shall be such basis to determine the amount of tax expended on behalf of policy holders or annuitants as is just and reasonable.

(4) For the purpose of determining whether a substantial change in the long-term business of a company has occurred in relation to—

(a) the first period of account ending on or after 31st December 2010, the long-term business of the company as at the end of the last day of that period of account is to be compared with the long-term business of the company as at the end of the last day of the first period of account to which these regulations applied; and

(b) a period of account beginning on or after 1st January 2011, the long-term business of the company as at the end of the last day of the period of account in which the substantial change occurs is to be compared with the long-term business of the company as at the end of the last day of the immediately preceding period of account.

(5) For the purposes of this regulation, a basis to determine the amount of tax expended on behalf of policy holders and annuitants is just and reasonable if it takes account of and is consistent with—

(a) the long-term business activities of the company; and

(b) the structure of the long-term insurance fund.

(6) In this regulation “a substantial change in the long-term business of a company” includes but is not limited to—

(a) an insurance business transfer scheme;

(b) the commencement of a new category of long-term business;

(c) ceasing to write a category of long-term business; or

(d) a change in the structure of the long-term insurance fund.”.

Amendment of regulation 4

6. For regulation 4 substitute—

“**Interpretation of regulations 3 and 3A**

4.—(1) In regulation 3 “the latest company tax return” means the company tax return for the latest preceding accounting period of the company or the transferor company for which such a return has been delivered before the day on which these Regulations come into force.

(2) In regulations 3 and 3A “an insurance business transfer scheme” means a scheme falling within section 105 of the Financial Services and Markets Act 2000(**a**), including an excluded scheme falling within Case 2, 3, 4 or 5 of subsection (3) of that section.

(3) In regulation 3A—

“long-term business”; and

“long-term insurance fund”

have the meanings given by section 431(2) of the Income and Corporation Taxes Act 1988(**b**).”.

Michael Fabricant
Brooks Newmark

8th December 2010 Two of the Lords Commissioners of Her Majesty’s Treasury

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(**a**) 2000 c. 8; section 105 was amended by SI 2007/3253 and by 2008/948.

(**b**) 1988 c. 1; section 431(2) was relevantly amended by paragraph 1 of Schedule 6 to the Finance Act 1990 (c. 29); by Part V(26) of Schedule 41 to the Finance Act 1996 (c. 8); by articles 26(5) and 52 of SI 2001/3629 and by articles 2 and 4 of S.I. 2008/1381.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Insurance Companies (Calculation of Profits: Policy Holders' Tax) Regulations 2003 (S.I. 2003/2082) ("the principal Regulations") which make provision for the purposes of section 82A of the Finance Act 1989 (c. 26) for a deduction for tax expended on behalf of policy holders or annuitants in computing the profits of an insurance company in respect of its life assurance business.

Regulation 1 provides for citation, commencement and effect of these Regulations. The power to make Regulations with limited retrospective effect is contained in section 82A of the Finance Act 1989.

Regulation 2 provides that the principal Regulations are to be amended.

Regulation 3 amends regulation 2 of the principal Regulations by inserting a reference to regulation 3A.

Regulation 4 amends regulation 3 of the principal Regulations to provide that where there has been a substantial change in the business of the company, regulation 3 will no longer apply to determine the basis of deduction, except in relation to the first period of account ending on or after 31st December 2010.

Regulation 5 inserts regulation 3A into the principal Regulations. Regulation 3A sets out the basis of deduction where there has been a substantial change in the long-term business of the company. Where there has been such a change, the basis of deduction to be used is one that is just and reasonable, except for the first period of account ending on or after 31st December 2010 where the substantial change occurred on or before that date. In those cases the company has the option of using the basis of deduction specified in regulation 3 of the principal Regulations or such other basis as is just and reasonable in determining the amount of tax expended on behalf of policy holders or annuitants for that period of account. For subsequent periods of account the company must use such basis of deduction as is just and reasonable. Regulation 3A also defines what is meant by "substantial change in the long-term business" and "just and reasonable".

Regulation 6 substitutes regulation 4 of the principal Regulations. The substituted regulation 4 contains the definition of terms used in the principal Regulations.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

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