Draft Order laid before the House of Commons under paragraph 16(5) of Schedule 9 to the Finance Act 2007, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2008 No.

CORPORATION TAX

The Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008

Made - - - -	***
Coming into force - -	***

The Treasury make the following Order in exercise of the powers conferred by paragraph 16 of Schedule 9 to the Finance Act 2007(**1**).

A draft of this instrument has been laid before the House of Commons in accordance with sub-paragraph (5) of that paragraph and approved by a resolution of that House.

Citation, commencement and effect

1.—(1) This Order may be cited as the Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008 and shall come into force on the day after this Order is made.

(2) Articles 3, 5, 7, 8, 10, 16, 25, 27 to 29 and 31 have effect in relation to transfers of business taking place on or after the date on which this Order comes into force.

(3) Article 4 has effect in relation to transfers of business taking place in periods of account current when this Order is made.

(4) Articles 6, 11 to 15, 17 to 23 and 26 have effect in relation to transfers of business taking place on or after 1st July 2008.

(5) Articles 9 and 30 have effect in relation to transfers of business taking place on or after 1st January 2007 (but do not have any effect in relation to periods of account other than those which are current when this Order is made).

Amendment of the Income and Corporation Taxes Act 1988

2. The Income and Corporation Taxes Act 1988(**2**) is amended as follows.

(**1**) 2007 c. 11.
(**2**) 1988 c. 1.

Amendment of section 12

3. In section 12 (basis of, and periods of, assessment)(**3**), omit subsections (7A) and (7C).

Amendment of section 431

4. In section 431(2) (interpretative provisions relating to insurance companies)(**4**), in paragraph (a) of the definition of "insurance business transfer scheme", for "or 4" substitute ", 4 or 5(**5**)".

Amendment of section 432YA

5. In section 432YA (long-term business other than life assurance business – adjustment consequent on change in Insurance Prudential Sourcebook)(**6**), omit subsection (2A).

Amendment of section 432E

6. In section 432E(2A) (apportionments: participating funds)(**7**)—

(a) omit "444ABC,",

(b) after "444AEA," insert "444AECA,",

(c) in paragraph (aa), omit "or 444ABC", and

(d) in paragraph (ab), after "444AEA" insert "or 444AECA".

Amendment of section 440B

7. In section 440B(4B) (modifications where tax charged under Case I of Schedule D)(**8**), after "apply" insert "in relation to assets which are referable to the life assurance business of the transferor".

Amendment of section 444A

8.—(1) Section 444A (transfers of business)(**9**) is amended as follows.

(2) In subsections (2), (3) and (3A), for "assuming the transferor had continued to carry on the business transferred after the transfer" substitute "making the assumptions in subsection (3B) below".

(3) After subsection (3A) insert—

"(3B) The assumptions referred to in subsections (2), (3) and (3A) above are—

(**3**) Section 12 was relevantly amended by paragraph 3 of Schedule 9 to the Finance Act 1990 (c. 29), S.I. 2001/3629, paragraph 1(6) of Schedule 41 to the Finance Act 2003 (c. 14), paragraph 20(2) and (3) of Schedule 9 to the Finance (No. 2) Act 2005 (c. 22) and paragraph 3(2) of Schedule 9 to the Finance Act 2007.

(**4**) Section 431(2) was relevantly amended by paragraph 1(1) of Schedule 9 to the Finance Act 2007.

(**5**) Case 5 was inserted in section 105(3) of the Financial Services and Markets Act 2000 (c. 8) by S.I. 2007/3253.

(**6**) Section 432YA was inserted by S.I. 2006/3387 and relevantly amended by S.I. 2007/1031 and paragraph 3(3)(a) of Schedule 9 to the Finance Act 2007.

(**7**) Section 432E was inserted by paragraph 4 of Schedule 6 to the Finance Act 1990. Subsection (2A) of that section was inserted by paragraph 10(4) of Schedule 33 to the Finance Act 2003 and relevantly amended by paragraph 2(2) of Schedule 11 to the Finance Act 2006 (c. 25) and paragraphs 4(2) and 8(2) of Schedule 9 to the Finance Act 2007.

(**8**) Section 440A was inserted by paragraph 28(1) of Schedule 8 to the Finance Act 1995 (c. 4) and subsection (4B) of that section was inserted section by paragraph 8(4) of Schedule 8 to the Finance Act 2007.

(**9**) Section 444A was inserted by paragraph 4 of Schedule 9 to the Finance Act 1990 and relevantly amended by paragraphs 17(4) and 27(2) of Schedule 8, and paragraph 1(2)(b) of Schedule 9, to the Finance Act 1995, paragraph 24 of Schedule 33 of the Finance Act 2003, paragraph 1 of Schedule 7 to the Finance Act 2004 (c. 12), S.I. 2004/2310 and paragraph 19(2) of Schedule 9 to the Finance (No. 2) Act 2005.

(a) that the transferor had continued to carry on the business transferred after the transfer, and

(b) where there is no accounting period of the transferor ending with the transfer date, that there was such an accounting period."

(4) Omit subsection (3ZA).

Insertion of sections 444AZA to 444AZC

9. After section 444A insert—

"**Transfers of life assurance business: Case VI losses of the transferor**

444AZA.—(1) This section applies where—

(a) an insurance business transfer scheme has effect to transfer life assurance business from one person ("the transferor") to another ("the transferee"),

(b) assuming the transferor had continued to carry on the business transferred after the transfer, the amount of any profits would have been charged to tax in respect of that business under the I minus E basis,

(c) the profits in respect of the business transferred for the first period of account of the transferee ending after the date on which the transfer takes effect are charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3)(**10**), and

(d) the conditions in paragraphs (a) and (b) of section 343(1) are satisfied in relation to the business transferred (construing references to an event as to a transfer).

(2) Any loss which (assuming the transferor had continued to carry on the business transferred after the transfer) would have been available to be set off against profits chargeable under section 436A(**11**) (a "Case VI loss") shall instead be treated as a loss of the transferee (a "Case I loss") available to be set off against GRBP in relation to a period of account.

(3) For the purposes of subsection (2) above "GRBP", in relation to a period of account, is—

$$P \times \frac{GRBTL}{TL}$$

where—

P is the amount of such profits of the transferee's life assurance business for the period of account as relate to the business transferred (that amount being determined in accordance with section 343(9) and (10), where applicable),

GRBTL is the mean of the opening and closing liabilities of the transferred gross roll-up business for the period of account, and

TL is the mean of the opening and closing liabilities of the transferred life assurance business for the period of account.

(4) Where the transfer is of part only of the transferor's long-term business, subsection (2) above shall apply only to such part of any Case VI loss to which it would otherwise apply as is appropriate.

(**10**) Section 431G was substituted by paragraph 4 of Schedule 8 to the Finance Act 2007.
(**11**) Section 436A was inserted by paragraph 25 of Schedule 7, and amended by paragraph 12 of Schedule 9, to the Finance Act 2007.

(5) Any question arising as to the operation of subsection (4) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and the transferee shall be entitled to appear and be heard or to make representations in writing.

Transfers of life assurance business: Case I losses of the transferor

444AZB.—(1) This section applies where—

(a) an insurance business transfer scheme has effect to transfer life assurance business from one person ("the transferor") to another ("the transferee"),

(b) assuming the transferor had continued to carry on the business transferred after the transfer, the amount of any profits would have been charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3),

(c) the profits in respect of the business transferred for the first period of account of the transferee ending after the date on which the transfer takes effect are charged to tax under the I minus E basis, and

(d) the conditions in paragraphs (a) and (b) of section 343(1) are satisfied in relation to the business transferred (construing references to an event as to a transfer).

(2) The relevant fraction of any loss which (assuming the transferor had continued to carry on the business transferred after the transfer) would have been available to be set off against profits of that business (a "Case I loss") shall instead be treated as a loss of the transferee (a "Case VI loss") available to be set off against the amount of such profits chargeable under section 436A for a period of account as relate to the business transferred (that amount being determined in accordance with section 343(9) and (10), where applicable).

(3) For the purposes of subsection (2) above "the relevant fraction", in relation to a period of account, is—

$$\frac{GRBTL}{TL}$$

where—

GRBTL is the mean of the opening and closing liabilities of the transferred gross roll-up business for the period of account, and

TL is the mean of the opening and closing liabilities of the transferred life assurance business for the period of account.

(4) Where the transfer is of part only of the transferor's long-term business, subsection (2) above shall apply only to such part of the amount of any Case I loss to which it would otherwise apply as is appropriate.

(5) Any question arising as to the operation of subsection (4) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and the transferee shall be entitled to appear and be heard or to make representations in writing."

Substitution of section 444AA

10. For section 444AA (transfers of business: deemed periodical return)(**12**) substitute—

(**12**) Section 444AA was inserted by paragraph 18 of Schedule 33 to the Finance Act 2003 (c. 14) and substituted by paragraph 3 of Schedule 9 to the Finance Act 2007 (c. 11).

"**Transfers of business: deemed periodical returns**

444AA.—(1) This section applies where the whole of the long-term business of a person ("the transferor") is transferred from that person–

(a) by one insurance business transfer scheme, or

(b) by two or more insurance business transfer schemes which take effect on the same date.

(2) Where (apart from this subsection) there would not be a periodical return of the transferor covering a period ending immediately before the transfer date, there is to be deemed for the purposes of corporation tax to be a periodical return of the transferor covering the period—

(a) beginning immediately after the last period ending before the transfer date which is covered by a periodical return of the transferor, and

(b) ending immediately before the transfer date.

(3) The periodical return deemed to exist by subsection (2) above is to be deemed to contain—

(a) such entries as would be included in an actual periodical return of the transferor covering the period mentioned in subsection (2) above, and

(b) such entries as would be included in an actual periodical return of the transferor covering the period—

(i) beginning immediately after the end of the period mentioned in subsection (2)above, and

(ii) ending immediately before the transfer had effect,

and the period mentioned in subsection (2) above is to be deemed to be a period of account (but not an accounting period) of the transferor.

(4) There is to be deemed for the purposes of corporation tax to be a periodical return of the transferor—

(a) covering the transfer date, and

(b) containing the appropriate entries.

(5) In subsection (4) above "appropriate entries" means such entries as would be included in an actual periodical return covering the transfer date—

(a) in line 32 of Form 40, and

(b) in line 11 of Form 14, in both columns (treating references in that form to "current year" as references to the time immediately after the transfer date and to "previous year" as references to the time immediately before the transfer date).

(6) A transfer date covered by a periodical return deemed to exist by subsection (4) above is to be deemed to be a period of account of the transferor only for the purpose of taking into account profits under section 444ABD(**13**).

(7) Where—

(a) a periodical return deemed to exist by subsection (4) above is preceded by an actual periodical return of the transferor covering the period immediately before the transfer date, and

(b) profits are to be taken into account under section 444ABD in the period of account deemed to exist by subsection (6) above,

(**13**) Section 444ABD was inserted by paragraph 5 of Schedule 9 to the Finance Act 2007.