

EXPLANATORY NOTE**CLAUSES 55 to 179 SCHEDULES 16 to 19: SOLVENCY II & THE
TAXATION OF LIFE INSURANCE COMPANIES****AMENDMENTS X to Y****SUMMARY**

1. These clauses and schedules establish a new regime for the taxation of life insurance companies, make provision for transitional arrangements and repeal much of the existing legislation governing the taxation of life insurance companies. The amendments address points of detail to ensure that they will operate as intended in four areas, namely:
 - Restrictions to the use of “basic life assurance and general annuity business” (BLAGAB) trade losses (Clause 126);
 - Intra-group transfers of long-term business (Clauses 129 and 130);
 - Carry back of loan relationship deficits (Schedule 16 paragraph 154);
 - Transition of holdings of securities to the new regime (Schedule 17 paragraph 27).

DETAILS OF THE AMENDMENTS

2. Amendments [1 and 2] modify clause 126. The restriction to the immediate use of BLAGAB trade losses for a period is now made by reference to non-trading deficits arising on debtor relationships and derivative contracts of a company only, excluding deficits on creditor relationships.
3. Clause 129 is amended in two respects. Firstly, amendment [3] inserts new subsections (5A) to (5D). Where, in a transfer of long-term business between connected companies the parties value the assets and liabilities transferred differently, an appropriate adjustment is now required to the calculation of the BLAGAB trade profits of the transferee company (and this treatment is extended to non-BLAGAB trade profits by clause 131 without need for any amendment). In addition an order-making power is provided to permit amendments to this rule.

4. Secondly, amendment [4] inserts new subsection (5E) into clause 129. Transfers of long-term business between connected companies which involve a with-profits fund are removed from the scope of the rules for connected company transfers. They are instead to be treated as being between unconnected companies. Clause 130 is concerned with unconnected transfers, and amendments [5 to 9] make consequential changes to clause 130 to enable it to encompass with-profit fund transfers as well.
5. Amendment [10] makes changes to paragraph 154 of schedule 16, which in turn amends section 390 Corporation Tax Act 2009. Where loan relationship deficits are carried back and relieved in an earlier year, the calculation of profits against which the carried back deficit may be relieved will not be adversely affected in cases where there is an excess of expenses over income in the earlier period.
6. Amendment [11] modifies paragraph 27 of schedule 17 by replacing sub-paragraphs (2) to (5). On transition of existing holdings of securities into new holdings under the new regime, the base cost and associated indexation allowance are to be identified separately in the new holding. This ensures that the more general restriction on indexation allowances not giving rise to a chargeable loss will operate properly following the transition.

BACKGROUND NOTE

7. The EU Solvency II Directive, which is expected to have effect from 2014, will fundamentally change the regulatory reporting framework on which life insurance company taxation is currently based. As a result of the changes which will be introduced by the Directive, regulatory returns made by insurance companies to the Financial Services Authority will no longer provide the information on which the current basis of taxation relies.
8. A new regime for the taxation of life insurance companies is therefore being introduced, which will apply from 1 January 2013. It aims to simplify the unique and complex rules currently governing life company taxation by bringing them more in line with those which apply to companies generally, and aligning them more closely with the commercial realities of life insurance business. Part 2, consisting of clauses 55 to 149, establishes a new regime for the corporate taxation of life insurance companies. This is a significant revision of the unique tax rules applying to that sector, involving wide-ranging and complex technical changes. The Government has consulted closely with the industry and other stakeholders for almost three years over the design of the new regime and the transitional arrangements and to ensure that the new legislation will operate as intended.

9. Ongoing discussion since the new legislation was published has identified points of detail in four areas where the clauses could have led to unfair or inappropriate tax effects in certain circumstances. These amendments eliminate those unintended effects.

PUBLIC BILL COMMITTEE

FINANCE BILL

David Gauke

Clause 126, page 76, line 13, leave out from ‘any’ to end of line 15 and insert
‘relevant non-trading deficit which the company has for the accounting period.’. 1

David Gauke

Clause 126, page 76, line 15, at end insert— 2
(2) The reference to a relevant non-trading deficit for an accounting period is a reference to the non-trading deficit which the company would have under section 388 of CTA 2009 (loan relationships and derivative contracts) if credits and debits given in respect of the company’s creditor relationships (within the meaning of Part 5 of that Act) were ignored.’.

David Gauke

Clause 129, page 78, line 19, at end insert— 3
(5A) But if there is a difference between—
 (a) the net amount recognised by the transferee in respect of the transfer of contracts of long-term insurance or contracts made in the course of capital redemption business, and
 (b) the net amount recognised by the transferor in respect of the transfer of those contracts,
the amount of the difference is to be taken into account for the purpose of calculating the BLAGAB trade profit or loss of the transferee for the accounting period in which those contracts are transferred.
(5B) The difference is to be taken into account—
 (a) as a receipt (if, when added to the net amount in subsection (5A)(b), the result is the net amount in subsection (5A)(a)), and
 (b) as an expense (if, when subtracted from the net amount in subsection (5A)(b), the result is the net amount in subsection (5A)(a)).
(5C) The net amount recognised by an insurance company in respect of the transfer of the contracts is determined by subtracting—
 (a) the total amount in respect of liabilities relating to the contracts that is or would be recognised for the purposes of a balance sheet drawn up at the relevant time by the company in accordance with generally accepted accounting practice, from

Public Bill Committee:

Finance Bill, *continued*

(b) the total amount in respect of assets relating to the contracts that is or would be recognised for those purposes,
and “the relevant time” means the time immediately before the transfer (in the case of the transferor) and the time immediately after it (in the case of the transferee).

(5D) The Treasury may by order amend any of subsections (5A) to (5C).’.

David Gauke

4

Clause 129, page 78, line 19, at end insert—

‘(5E) This section does not apply to any amount that arises in respect of a transfer so far as the transfer consists of a with-profits fund transfer.

The reference here to a with-profits fund transfer is a reference to—

- (a) a transfer of business from a with-profits fund to a fund that is not a with-profits fund, or
- (b) a transfer of business from a fund that is not a with-profits fund to a with-profits fund.’.

David Gauke

5

Clause 130, page 78, line 27, at beginning insert ‘either’.

David Gauke

6

Clause 130, page 78, line 28, at end insert ‘or, if they are, the transfer consists of or includes a with-profits fund transfer within the meaning of section 129(5E)’.

David Gauke

7

Clause 130, page 78, line 31, leave out ‘business (or part of the business) transferred’ and insert ‘relevant transferred business’.

David Gauke

8

Clause 130, page 78, line 38, at end insert—

‘(2A) In subsection (1)(c) “the relevant transferred business” means—

- (a) if the transferor and transferee are not members of the same group of companies when the transfer occurs, the business (or part of the business) transferred under the insurance business transfer scheme, and
- (b) if the transfer consists of or includes a with-profits fund transfer, the business transferred by the with-profits fund transfer.’.

David Gauke

9

Clause 130, page 78, line 41, leave out from ‘apply’ to end of line 42 and insert ‘so far as section 129(5) applies in relation to the transfer.’.

David Gauke

10

Schedule 16, page 388, line 41, leave out paragraph (c) and insert—

‘(c) in step 2, for paragraph (a) (together with the “and” at the end of it) substitute—

“(a) so much of the amount for the purposes of section 73 of FA 2012 of the adjusted BLAGAB management expenses of the company for the period as, on the

Finance Bill, *continued*

assumption that the company had no BLAGAB non-trading loan relationships profits for the period, could be subtracted at step 6 under that section without producing a negative amount, and”.’.

David Gauke

11

Schedule 17, page 417, line 8, leave out sub-paragraphs (2) to (5) and insert—

- ‘(2) Each new holding is treated for the purposes of corporation tax on chargeable gains as if it were a holding of the company with a base cost and an indexation allowance as at 1 January 2013 equal to the total of the base costs and indexation allowances of the old holdings that are carried into the new holding.
- (3) In the case of securities (“new securities”) comprised in a new holding, the amount of the base cost or indexation allowance of an old holding that is carried into the new holding is equal to the proportion which the new securities derived from the old holding bear to all of the securities comprised in the old holding.
- (4) For the purpose of calculating the indexation allowance of a new holding in respect of any period falling on or after 1 January 2013, it is to be assumed that, on that date, there had been a disposal of the holding for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the company.
- (5) For the purposes of this paragraph—
 - (a) references to a base cost are—
 - (i) in the case of a section 104 holding, references to the amount of qualifying expenditure within the meaning of section 110 of TCGA 1992, and
 - (ii) in the case of a 1982 holding, references to the amount of expenditure that would fall to be deducted if the holding were disposed of,
 - (b) references to an indexation allowance are—
 - (i) in the case of a section 104 holding, references to the indexation allowance as found in accordance with section 110 of TCGA 1992, and
 - (ii) in the case of a 1982 holding, references to the indexation allowance within the meaning of Chapter 4 of Part 2 of that Act,
 - (c) the base cost and the indexation allowance of an old holding are calculated on the assumption that the holding is disposed of immediately before 1 January 2013,
 - (d) “section 104 holding” has the same meaning as in section 104(3) of TCGA 1992, and
 - (e) “1982 holding” has the same meaning as in section 109 of that Act.’.