STATUTORY INSTRUMENTS

2008 No. 1926

CORPORATION TAX

The Financing-Arrangement-Funded Transfers to Shareholders Regulations 2008

Made - - - -	*22nd July 2008*
Laid before the House of Commons	*22nd July 2008*
Coming into force - -	*12th August 2008*

The Treasury make the following Regulations in exercise of the powers conferred by section 83YE(1) and (4) of the Finance Act 1989(**a**).

Preliminary

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Financing-Arrangement-Funded Transfers to Shareholders Regulations 2008 and shall come into force on 12th August 2008.

(2) These Regulations have effect in relation to periods of account beginning on or after 1st January 2008.

Interpretation

2. In these Regulations—

a "relevant financing arrangement" means a relevant financing arrangement in relation to a non-profit fund within section 83YC(4) of the Finance Act 1989(**b**);

a "section 83YC(3) amount" means an amount within section 83YC(3) of the Finance Act 1989;

a "section 83YC(3) period of account" means a period of account for which there is a section 83YC(3) amount;

a "section 83YD arrangement" means a relevant financing arrangement in respect of which there is a section 83YD(2) amount;

a "section 83YD(2) amount" means an amount within section 83YD(2) of the Finance Act 1989(**c**);

a "section 83YD(2) period of account" means a period of account for which there is a section 83YD(2) amount.

(**a**) 1989 c. 26; section 83YE was inserted by paragraph 1(3) of Schedule 17 to the Finance Act 2008 (c. 9).
(**b**) Section 83YC of the Finance Act 1989 was inserted by paragraph 1(3) of Schedule 17 to the Finance Act 2008.
(**c**) Section 83YD of the Finance Act 1989 was inserted by paragraph 1(3) of Schedule 17 to the Finance Act 2008.

Amounts wholly attributable to life assurance business or to gross roll-up business

3.—(1) This regulation applies if, at the end of a section 83YC(3) period of account, each relevant financing arrangement of an insurance company has as a condition of the arrangement that—

(a) in the case of a loan, any repayment may only be made if the company has an amount of surplus from carrying on life assurance business or gross roll-up business and the repayment is made from that surplus, or

(b) in the case of a financial reinsurance arrangement, any recapture of liabilities may only be made if the company has an amount of surplus from carrying on life assurance business or gross roll-up business.

(2) The section 83YC(3) amount is wholly referable to life assurance business or to gross roll-up business (as the case may be).

Other cases where relevant financing arrangements meet the loan condition only: life assurance business and PHI business

4.—(1) This regulation applies if, in a section 83YC(3) period of account—

(a) an insurance company carries on both life assurance business and PHI business, and

(b) each relevant financing arrangement of the company in force in that period of account meets the loan condition (and not the reinsurance condition).

(2) The part of the section 83YC(3) amount referable to life assurance business is—

$$\frac{LABL}{LABL + PHIL}$$

where—

"*LABL*" is the mean of the opening and closing liabilities of the company's life assurance business relating to the non-profit fund for the section 83YC(3) period of account, and

"*PHIL*" is the mean of the opening and closing liabilities of the company's PHI business relating to the non-profit fund for that period of account.

Other cases where relevant financing arrangements meet the loan condition only: gross roll-up business and basic life assurance and general annuity business

5.—(1) This regulation applies if, in a section 83YC(3) period of account—

(a) an insurance company carries on both gross roll-up business and basic life assurance and general annuity business, and

(b) each relevant financing arrangement of the company in force in that period of account meets the loan condition (and not the reinsurance condition).

(2) The part of the section 83YC(3) amount referable to gross roll-up business is—

$$\frac{GRBL}{LABL + PHIL}$$

where—

"*GRBL*" is the mean of the opening and closing liabilities of the company's gross roll-up business relating to the non-profit fund for the section 83YC(3) period of account, and

"*LABL*" and "*PHIL*" each have the same meaning as in regulation 4(2).

Other cases where relevant financing arrangements meet the reinsurance condition only: life assurance business and PHI business

6.—(1) This regulation applies if, in a section 83YC(3) period of account—

(a) an insurance company carries on both life assurance business and PHI business, and

(b) each relevant financing arrangement of the company in force in that period of account meets the reinsurance condition (and not the loan condition).

(2) The part of the section 83YC(3) amount referable to life assurance business is—

$$\frac{LABL + LFRAL}{LABL + PHIL + TFRAL}$$

where—

"*LFRAL*" is the mean of the opening and closing life assurance liabilities reinsured under relevant financing arrangements relating to the non-profit fund for that period of account,

"*TFRAL*" is the mean of the total opening and closing liabilities reinsured under relevant financing arrangements relating to the non-profit fund for that period of account, and

"*LABL*" and "*PHIL*" each have the same meaning as in regulation 4(2).

Other cases where relevant financing arrangements meet the reinsurance condition only: gross roll-up business and basic life assurance and general annuity business

7.—(1) This regulation applies if, in a section 83YC(3) period of account—

(a) an insurance company carries on both gross roll-up business and basic life assurance and general annuity business, and

(b) each relevant financing arrangement of the company in force in that period of account meets the reinsurance condition (and not the loan condition).

(2) The part of the section 83YC(3) amount referable to gross roll-up business is—

$$\frac{GRBL + GFRAL}{LABL + PHIL + TFRAL}$$

where—

"*GFRAL*" is the mean of the opening and closing gross roll-up business liabilities reinsured under relevant financing arrangements relating to the non-profit fund for that period of account,

"*GRBL*" has the same meaning as in regulation 5(2),

"*LABL*" and "*PHIL*" each have the same meaning as in regulation 4(2), and

"*TFRAL*" has the same meaning as in regulation 6(2).

Relevant financing arrangements of more than one type

8.—(1) This regulation applies if, in a section 83YC(3) period of account—

(a) an insurance company carries on—

(i) both life assurance business and PHI business, or

(ii) both gross roll-up business and basic life assurance and general annuity business; and

(b) the relevant financing arrangements of the company in force in that period of account include—

(i) at least one arrangement that meets the loan condition (and not the reinsurance condition), and

(ii) at least one arrangement that meets the reinsurance condition (and not the loan condition).

(2) The part of the section 83YC(3) amount referable to life assurance business is determined in accordance with regulation 6(2).

(3) The part of the section 83YC(3) amount referable to gross roll-up business is determined in accordance with regulation 7(2).

The treatment of section 83YD(2) amounts

Amounts wholly attributable to life assurance business or to gross roll-up business

9.—(1) This regulation applies if, at the beginning of a section 83YD(2) period of account, each relevant financing arrangement of an insurance company has as a condition of the arrangement that—

(a) in the case of a loan, any repayment may only be made if the company has an amount of surplus from carrying on life assurance business or gross roll-up business and the repayment is made from that surplus, or

(b) in the case of a financial reinsurance arrangement, any recapture of liabilities may only be made if the company has an amount of surplus from carrying on life assurance business or gross roll-up business.

(2) The section 83YD(2) amount is wholly referable to life assurance business or to gross roll-up business (as the case may be).

Other cases where relevant financing arrangements meet the loan condition only: life assurance business and PHI business

10.—(1) This regulation applies if, in a section 83YD(2) period of account—

(a) an insurance company carries on both life assurance business and PHI business,

(b) each relevant financing arrangement of the company in force in that period of account meets the loan condition (and not the reinsurance condition), and

(c) there has been only one section 83YC(3) amount in that period of account and all preceding periods of account.

(2) The part of the section 83YD(2) amount referable to life assurance business is a fraction of that amount, determined in accordance with regulation 4(2), for the period of account in which the section 83YC(3) amount arose in respect of the section 83YD arrangement.

Other cases where relevant financing arrangements meet the loan condition only: gross roll-up business and basic life assurance and general annuity business

11.—(1) This regulation applies if, in a section 83YD(2) period of account—

(a) an insurance company carries on both gross roll-up business and basic life assurance and general annuity business,

(b) each relevant financing arrangement of the company in force in that period of account meets the loan condition (and not the reinsurance condition), and

(c) there has been only one section 83YC(3) amount in that period of account and all preceding periods of account.

(2) The part of the section 83YD(2) amount referable to gross roll-up business is a fraction of that amount, determined in accordance with regulation 5(2), for the period of account in which the section 83YC(3) amount arose in respect of the section 83YD arrangement.

Other cases where relevant financing arrangements meet the reinsurance condition: life assurance business and PHI business

12.—(1) This regulation applies if, in a section 83YD(2) period of account—

(a) an insurance company carries on both life assurance business and PHI business,

(b) each relevant financing arrangement of the company in force in that period of account—

(i) meets the reinsurance condition (and not the loan condition), or

(ii) meets both the reinsurance condition and the loan condition, and

(c) there has been only one section 83YC(3) amount in that period of account and all preceding periods of account.

(2) The part of the section 83YD(2) amount referable to life assurance business is a fraction of that amount, determined in accordance with regulation 6(2), for the period of account in which the section 83YC(3) amount arose in respect of the section 83YD arrangement.

Other cases where relevant financing arrangements meet the reinsurance condition: gross roll-up business and basic life assurance and general annuity business

13.—(1) This regulation applies if, in a section 83YD(2) period of account—

(a) an insurance company carries on both gross roll-up business and basic life assurance and general annuity business,

(b) each relevant financing arrangement of the company in force in that period of account—

(i) meets the reinsurance condition (and not the loan condition), or

(ii) meets both the reinsurance condition and the loan condition, and

(c) there has been only one section 83YC(3) amount in that period of account and all preceding periods of account.

(2) The part of the section 83YD(2) amount referable to gross roll-up business is a fraction of that amount, determined in accordance with regulation 7(2), for the period of account in which the section 83YC(3) amount arose in respect of the section 83YD arrangement.

Cases involving more than one section 83YC(3) amount

14.—(1) This regulation applies if—

(a) there has been more than one section 83YC(3) amount for a period of account (or for more than one period of account),

(b) that period of account is (or those periods of account are) earlier than the section 83YD(2) period of account, and

(c) regulation 9 does not apply.

(2) The insurance company may claim that the section 83YD(2) amount is such a fraction of the amount determined under section 83YD(4) of the Finance Act 1989 as is just and reasonable in the circumstances.

Claire Ward
Dave Watts

22nd July 2008 — Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 83YC and 83YD of the Finance Act 1989 (inserted by paragraph 1(3) of Schedule 17 to the Finance Act 2008) provide a revised tax treatment for a type of financing arrangement where a loan or advance made to an insurance company or a financial reinsurance arrangement made by an insurance company has the initial effect of increasing the company's surplus which is used to make a transfer to the shareholders of the company. This type of transfer is known as a "financing-arrangement-funded transfer to shareholders", sometimes abbreviated to "FAFTS". The new section 83YC imposes a charge to tax if an insurance company makes a FAFTS in relation to a non-profit fund; and the new section 83YD provides for corresponding adjustments to be made if a loan or advance is repaid or if liabilities reinsured under a financial reinsurance arrangement are recaptured.

It is not possible to use the existing allocation rules in the Corporation Tax Acts to attribute tax charges under section 83YC or tax deductions under section 83YD. These Regulations accordingly provide rules in all cases where more than one category of business is involved. Regulations 3 to 8 contain rules relating to the treatment of amounts arising under subsection (3) of section 83YC; and regulations 9 to 14 contain rules relating to the treatment of amounts arising under subsection (2) of section 83YD.

These Regulations have effect in relation to periods of account beginning on or after 1st January 2008: and are accordingly capable of having retrospective effect in certain circumstances. Authority for the retrospective effect made by these Regulations is conferred by section 83YE(4) of the Finance Act 1989 (also inserted by paragraph 1(3) of Schedule 17 to the Finance Act 2008).

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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