Life Insurance Tax Handbook – 2021 refresh

November 2021

Strictly private and confidential

Dear All

Welcome to our updated and refreshed Life Tax Handbook. Much has changed since our previous edition and so we thought it would be helpful to bring this up to date.

We've set out below our overall view on the latest state of play with the life tax rules and what's set out in this handbook.

Clearly, the industry is heading into a further period of change with the upcoming advent of IFRS17 (not to mention the post Brexit and COVID world, and ever changing technology!). We'll cover these points as well as any implications of the OECD BEPS project in subsequent editions as appropriate, but this edition summarises where we are at as at October 2021. The current position on the life tax rules and what's covered in this handbook is set out below.

If you have any queries, please speak to your normal PwC contact or any one of our senior life tax group – their details are included for your reference. This Handbook refresh has been a collective effort by the whole team, and it has been great to have most grades of staff involved in some capacity. We hope you all enjoy the 'light reading' in this handbook!

PwC's Life Tax Group, November 2021

'Tax doesn't wait for anyone, but you always have to wait for tax.'

The life tax world post Finance Act 2012

Back in 2013, Finance Act 2012 brought about a brand-new tax regime for long-term business. A regime where computation preparation begins with the statutory financial statements and where apportionment of income and gains for the 'I-E' computation relies on a company's own commercial bases of allocation rather than the previous (occasionally rather arbitrary) formulaic approach.

The life insurance industry has now had 8 years of the 'new regime' brought to life by Finance Act 2012 ('FA 2012'). We have had a chance to let the regime 'bed in' and be used in practice. Due to the complexity of the initial revisions required, the FA 2012 regime was not considered perfect back in 2013 with some uncertainties, peculiarities and possible errors identified, and some requests of HMRC not achieved through consultation. However, some of these matters have been subsequently addressed – the finalisation of the new BLAGAB Reinsurance Regulations as an example, finally issued in 2018 (although certain aspects of these rules remain under discussion with HMRC).

Principles of life tax computations

In 2021, the 'I–E' computation is still predicated on the commercial allocation of income, gains and expenses and the policyholder tax rate of 20% applied to the policyholder share of BLAGAB profits is unaltered. The rules for the annual deemed disposal of unit trusts, OEICs and the like in section 212 is well known and loved by all, as well as the spreading of BLAGAB acquisition expenses over a 7-year period. (Although anecdotally based on recent industry discussions relevant to IFRS17 and a suggestion by HMRC, there is a question mark over the future necessity for such a tax rule considering the industry business profile of more recent years). The trade profits computations for BLAGAB and non-BLAGAB business are based on general trade profits principles, with life tax modifications and subtleties applied over the top such as the requirement to tax dividends without application of the exemptions of CTA09/Part 9A, and allowing a deduction for policyholder tax (BLAGAB only) etc.

Since 2013 however, the wider UK tax environment has developed, as well as the final implementation of Solvency II in 2016 meaning tax attributes are now admissible assets for regulatory capital purposes. Some subtle tweaks have been made to FA 2012 as a result of subsequent legislation, but there have also been some pretty all-encompassing changes to the specifics of the interaction of the FA 2012 regime with new legislation that has entered the red and yellow books in more recent years.

In particular, the interaction of the new loss relief restriction caused some initial issues when applied as originally proposed in an insurance regulatory context. This was satisfactorily addressed through active lobbying from the industry to bring about the 'shock loss exemption' to the requirement to otherwise restrict the offset of the loss on a 1 in 200-year event by 50% for the purposes of LACDT recognition. Additionally, the Corporate Interest Restriction (CIR) rules now to be found in TIOPA2010 Part 10, coupled with changes to the loan relationships and derivatives regime in 2016, have necessitated insurance specific provisions and elections. The overall tax regime for life insurers has therefore changed in a number of important ways since our last edition of this handbook was published.

Purpose of the Handbook and it's update

The Handbook has been designed to help navigate and explain the myriad of specific life insurance tax legislation. It is to provide an introduction to the many and varied rules relating to the taxation of life insurance businesses.

This version of the Handbook is intended to be a refresh rather than a rewrite of our previous edition. Although a lot of content remains unchanged, it now covers the life insurance implications of the substantial changes brought about by CIR, changes to the loan relationships and derivatives rules in 2016, the loss relief restriction (and complimentary flexibilities) applicable from April 2017 as well as the 2018 BLAGAB Reinsurance Regulations. Other sections on Transfers of Business, Intangible Fixed Assets and Transfer Pricing have been given an update and spruce-up considering recent experience and insight. As with our previous edition, this Handbook no longer includes an example computation and also the previous sections on the detailed transitional adjustment rules into the FA 2012 regime have been removed as 'old news' (particularly as the 10 year spreading is nearly over!).

It is noted that HMRC themselves carried out a project between 2018–2020 to rewrite the Life Assurance Manual (LAM) to take account of the FA 2012 regime. Prior to this the industry and indeed HMRC were left to interpret the legislation unguided with only a few Interim Chapters on Transfers of Business, Allocation Rules and Transitional Provisions to refer to. We hope this refreshed Handbook complements the recently published LAM guidance in consequence.

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1. Overview

Separate businesses

Where a life company carries on basic life assurance and general annuity business ('BLAGAB') as well as other long-term business the tax computation must reflect this as two different businesses – BLAGAB and non-BLAGAB long-term business.

BLAGAB includes all life assurance business other than specified categories. Non-BLAGAB long-term business is long-term business that is not BLAGAB by definition and includes PHI business as well as protection business written on or after 1 January 2013 which is now classed as non-BLAGAB.

BLAGAB

I – E basis

BLAGAB is taxed – under a specific charging provision – on its I-E profit, being investment income (and chargeable gains) minus expenses.

This basis enables HM Revenue & Customs ('HMRC') to tax a life company on its investment return as it arises albeit that the return is to a large extent for the future benefit of policyholders. The life company is used, as a proxy for the policyholders, to tax the investment return as it arises rather than waiting until policies mature or are surrendered.

A UK policyholder of a UK company (or a branch of an overseas company) is treated as receiving profits which have already suffered basic rate tax; the policyholder is liable directly for any higher rate tax liability.

For a mutual company all the investment return and other profits will benefit the mutual policyholders and this is recognised by the I-E profit being taxed at the basic rate of income tax (currently 20%).

For a proprietary company the I-E profit is subject to an additional test. A computation of BLAGAB trade profits is made and is compared with the I-E profits (adjusted to take into account tax-exempt dividend income referable to BLAGAB). If the adjusted I-E profit exceeds BLAGAB trade profits there is no further action. If the trading profit measure is higher, the excess amount is taxed as additional BLAGAB investment return in the I-E computation with a corresponding amount treated as expenses carried forward and available to relieve BLAGAB income and gains in the next year.

The BLAGAB trade profits computation is also used for a proprietary company to determine the effective tax rate in the I-E computation. A 'first slice' of the I-E profit up to the trading profit (as adjusted to take into account the tax exemption for dividend income referable to BLAGAB and brought forward BLAGAB trade losses) is deemed to represent shareholder trading profit and is taxable at the standard rate of corporation tax: any excess is charged at the basic rate of income tax.

Non-BLAGAB long-term business

Non-BLAGAB long-term business is taxed as a normal trading company and is therefore subject to the rules in Part 3 of CTA 2009 and also to specific life assurance provisions detailed in the Finance Act 2012 e.g. a deduction is permissible for items allocated to policyholders to the extent these items are not capital and dividends receivable which are referable to the business will be brought into account.

Non-BLAGAB long-term business profits are taxable at the normal corporation tax rates – the policyholder rate does not apply. For a mutual, there should not be a taxable profit for non-BLAGAB long-term business. See further on this in chapter 6.7.

Abbreviations and other terminology

Statutory references are to the Finance Act 2012 'FA 2012' unless otherwise stated.

CTA 2009	Corporation Tax Act 2009
CTA 2010	Corporation Tax Act 2010
FSMA 2000	The Financial Services and Markets Act 2000
ITTOIA 2005	Income Tax (Trading and Other Income) Act 2005
TCGA 1992	The Taxation of Chargeable Gains Act 1992
TIOPA 2010	Taxation (International and Other Provisions) Act 2010

Note that in quotes from legislation FSMA 2000 is referred to as FISMA 2000.

2. Definitions

Types of business

Life assurance business

Life assurance business is defined in section 56 FA 2012 as meaning business which:

- consists of the effecting or carrying out of contracts of insurance which fall within paragraph I, II, III or VII (b) of Part 2 of Schedule 1 to the FSMA (Regulated Activities) Order 2001; or
- is capital redemption business.

Capital redemption business is defined as contracts which give a specified lump sum payment or series of payments in return for one or more fixed payments, determined on the basis of actuarial calculations.

Basic Life Assurance and General Annuity Business ('BLAGAB')

BLAGAB is defined in section 57 FA 2012 as life assurance business other than:

- pension business;
- child trust fund business;
- individual savings account business;
- immediate needs annuity business;
- reinsurance of life assurance business (other than excluded business);:
- overseas life assurance business; and
- protection business.

These terms are defined below. Note that protection business is only 'new' business (i.e. post 2012 business).

There is no category of 'life reinsurance business' – business which would be life reinsurance business is simply excluded from BLAGAB and thus falls into non-BLAGAB by default.

Long term business and Permanent Health Insurance (PHI) business

Long-term business is defined in section 63 FA 2012 as being:

- life assurance business; or
- business which consists of the effecting or carrying out of other contracts of long-term insurance.

'Contract of long-term insurance' means any contract falling within Part 2 of Schedule 1 to the FSMA (Regulated Activities) Order 2001.

PHI business is defined in section 62(3) as the business in the second bullet – i.e. long-term business which is not life assurance business. This is therefore arguably wider than the definition of permanent health insurance business in the FSMA (Regulated Activities) Order 2001.

Pension business ('PB')

PB is defined in section 58 FA 2012 to mean all business relating to registered pension schemes, including the reinsurance of such business. Annuity business relating to de – registered pension schemes is also treated as PB.

Retrocession of pension contracts would not appear to be pension business on this definition (but would be part of the non-BLAGAB long-term business since they would be excluded from BLAGAB under bullet 5 section 57 re reinsurance anyway – subject to the exclusions).

Child Trust Fund Business ('CTFB')

CTFB is defined in section 59 FA 2012 as being so much of a company's life assurance business as is referable to effecting or carrying out child trust fund policies (but not the reinsurance of such business).

Individual Savings Account Business ('ISAB')

ISAB is defined in section 60 FA 2012 as being so much of a company's life assurance business that is referable to effecting or carrying out individual savings account policies (but not the reinsurance of such business).

Overseas Life assurance Business ('OLAB')

OLAB is defined by section 61 FA 2012 as being any life assurance business where the policyholder is not resident in the UK, other than excluded business. Reinsurance of this business is however not included.

Excluded business is:

- PB;
- CTFB;
- ISAB; or
- business excluded by regulations.

There have not been (as yet) any draft regulations for other excluded business as relevant to OLAB.

Protection business

Protection Business is defined at section 62 FA 2012 as life assurance business where:

- the benefits payable cannot exceed the amount of the premiums paid except on death or in respect of incapacity due to injury, sickness or other infirmity; and
- the contract is made on or after 1 January 2013.

In assessing the benefits test, the following are to be ignored:

- non-cash inducements (such as small gifts) to enter into the contract;
- excesses which are an insignificant proportion (although there is no guidance as to the threshold of insignificance); and
- amounts only payable in highly unlikely circumstances.

The third test there is aimed at protection-type policies written to include a minimal chance of a large additional payout – an extreme example might be where £1 of premium is used to buy a lottery ticket with any prize given to the policyholder as immediate cash. Since the policy could pay out say £1m the benefits test would otherwise be failed. The test to be applied is of 'double reasonableness' – that is, what would a reasonable person reasonably regard as highly unlikely?

Non-BLAGAB long-term business

Non-BLAGAB long-term business is broadly long-term business which is not BLAGAB. It therefore includes:

- life assurance business excluded from BLAGAB as described above; and
- long-term business other than life assurance business (i.e. PHI business as defined above).

In terms of the pre-2013 rules, non-BLAGAB long-term business should comprise:

- gross roll-up business;
- PHI business; and
- new (from 1 January 2013) protection business.

Non-BLAGAB long-term business is defined in more detail in chapter 3.

Other definitions

Insurance company

Section 65 FA 2012 defines an insurance company as a person carrying on the activity of effecting or carrying out contracts of insurance where:

- authorised by the FCA under Part 4 of FSMA 2000;

Note that sections 65(2)(b) and (c) where companies were carrying on business in the UK through a permanent establishment (within EU passport or treaty rights) have both been repealed since the original enactment of Finance Act 2012 by SI 2019/689, Reg. 21(2)(a). (Although at the time of writing it is still possible for insurers authorised by the Gibraltar Financial Services Commission to operate in the UK via passporting).

The following are not insurance companies:

- friendly societies (see chapter 6.7); and
- insurance special purpose vehicles (see chapter 6.10) unless they are BLAGAB group reinsurers.

A BLAGAB group reinsurer is in broad terms an entity:

- which writes BLAGAB;
- its long-term business other than BLAGAB is not ‘substantially all’ the long-term business; and
- all its life assurance business is excluded business per regulations (SI 2018/538 for reinsurance arrangements entered into on or after 1 June 2018).

3. Computation

The following sections set out the key elements of the computation of the profits of a life assurance company's long-term business.

3.1. Charge to tax

The fundamental starting point for the computation of the profits of a life assurance company's long-term business is that where a company writes both BLAGAB and other long term business, that business shall be treated as two separate businesses. The legislation deals with the various combinations of business types that can arise:

- where a company writes both BLAGAB and other long-term business
  - BLAGAB is treated as a separate business, and
  - the other long-term business is treated as a separate business and regarded as a single trade;
- where a company writes life assurance business but none of it is BLAGAB, and also PHI business, then it is regarded as carrying on a single trade consisting of that business;
- where a company also writes short-term business, that business is to be regarded as a separate trade from any long-term business that it writes.

The single trade of the long-term business which is not BLAGAB is called non-BLAGAB long-term business. In this handbook it will often be abbreviated to non-BLAGAB.

If a company does not write either BLAGAB or PHI then its life assurance business is also referred to as non- BLAGAB long-term business.

This is set out in section 66 FA 2012, which appears to be more complicated than might be thought necessary to achieve this.

Where a company writes a de minimis amount of BLAGAB (the exact term is that 'all, or substantially all' of its business is not BLAGAB), section 67 provides that the BLAGAB business is ignored for the purposes of determining whether two separate businesses exist, and the company is instead treated as carrying on a single trade consisting of its long term business. This approach is set out in LAM02040 where it says:

'The policy objective is to minimise the compliance burden of producing BLAGAB tax computations for small amounts of BLAGAB business with small amounts of tax at stake.

There is no set limit for defining 'substantially all'. The application of this provision will depend on the facts and circumstances in each case. As a general rule, S67 should be applied where the amounts of business are small in absolute terms. This could be measured in terms of liabilities or investment income and gains potentially accruing.'

While no formal 'bright line test' exists, it is considered that if BLAGAB were 5% or less of total long-term business it is worth a discussion with HMRC as to whether the business is de minimis. The threshold of <5% has been known to be used in practice as a benchmark in similar scenarios in the past. Consequently it is expected that a similar threshold level is likely to be relevant when applying section 67.

Having identified the different businesses, the legislation then goes on to provide how those businesses are taxed:

- for BLAGAB, the charge to tax applies on the 'I-E profit' of the business; section 68 is the primary charging section;
- BLAGAB is excluded from the general trading charge at section 35 of CTA 2009, and from any other charge to corporation tax on income that might otherwise apply, and any charge to corporation tax on chargeable gains to the extent that they are referable to BLAGAB (section 69);
- non-BLAGAB long-term business (being whatever relevant combination of life assurance business that is not BLAGAB, and PHI business) is treated by the legislation as a single trade (with that name) and specifically brought to charge under section 35 of CTA 2009 (section 71);
- this general charge is subject to the specific provisions of the life tax regime in Chapter 6 FA 2012 (trade calculation rules applying to long-term business), Chapter 7 FA 2012 (trading apportionment rules), and Chapter 10 FA 2012 (transfers of business);

- non-BLAGAB long term business that is mutual business is not chargeable to tax under section 35 CTA 2009 under the mutuality principle, and there is an explicit exclusion of charge under any other provision of the Corporation Tax Acts – see chapter 6.7 for more details.

Where a company writes wholly PHI business, it is not subject to the life assurance regime (section 72), and prepares its tax computation as if it were an ordinary trading company. This can give rise to some asymmetries between wholly PHI insurers and those insurers which write mostly PHI business (e.g. when it comes to the treatment of index- linked gilts which would differ).

3.2. Calculation of tax charge

The charge to tax in respect of BLAGAB applies, under section 68, to the I-E profit. That profit is charged to tax at a combination of the policyholder tax rate and the corporation tax rate otherwise applicable.

The policyholder tax rate for a financial year is the basic rate of income tax for the tax year beginning on 6 April in that financial year. Thus it is 20% for financial year 2021 (year ending 31 March 2022) and might be expected to remain 20% for financial year 2022. The policyholder tax rate applies to the policyholders' share of the I-E profit.

The corporation tax rate otherwise applicable will usually be the mainstream rate:

- 19% for financial year 2021 and financial year 2022; and
- 25% for financial year 2023 (as substantively enacted at Budget 2021).

The effective rate for calendar year 2023 is thus (approximately) 23.5%.

In order to calculate the policyholder share of the I–E profit a comparison needs to be made between the:

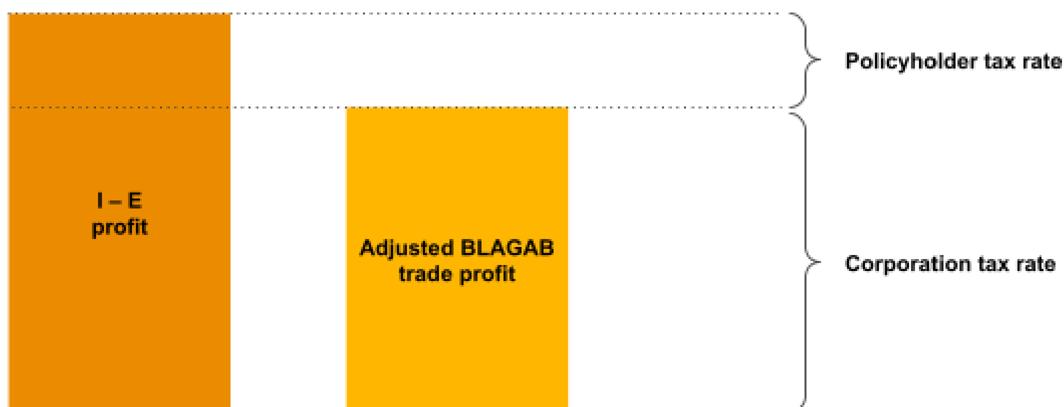
- 'I-E profit' (as calculated in accordance with chapter 3.3 which includes any deemed I-E receipts) and
- 'adjusted BLAGAB trade profit' (see below – note that this is not the same as the adjusted BLAGAB trade profit as calculated in chapter 3.6)

If there is no 'I-E profit' then there is (clearly) no charge to be made under section 68. No alternative charge applies unless the BLAGAB is de minimis.

If there is an 'I-E profit' in the period, then:

- if there is no BLAGAB trade profit, then the policyholders' share is the whole of the I-E profit.
- if there is a BLAGAB trade profit and the adjusted BLAGAB trade profit is less than the I-E profit, then the policyholders' share is the difference between the two amounts; (note that strictly this is the case which applies if the (positive) BLAGAB trade profit is eliminated by, say, brought forward BLAGAB losses, rather than the first bullet);
- if the adjusted BLAGAB trade profit is equal to or greater than the I-E profit, then the policyholders' share is nil.

The middle scenario is shown diagrammatically below:



Adjusted BLAGAB trade profit

The adjusted BLAGAB trade profit is calculated as:

- the BLAGAB trade profit; less

- utilisation of any brought forward BLAGAB trade losses under section 124 (see chapter 3.5.2); if that result is not nil, deduct
- the shareholders' share of BLAGAB non-taxable distributions

The adjusted BLAGAB trade profit cannot be negative (so that the deduction for the shareholders' share of BLAGAB non-taxable distributions will be restricted if necessary).

Shareholders' share of BLAGAB non-taxable distributions

The shareholders' share of BLAGAB non taxable distributions is found by applying the 'relevant proportion' to the figure for the BLAGAB non-taxable distributions.

The relevant proportion is:

$$\frac{\mathbf{BTP}}{\mathbf{BNTD + I}}$$

where:

- **BTP** is the amount of the BLAGAB trade profit (before loss brought forward);
- **BNTD** is the amount of the BLAGAB non-taxable distributions; and
- **I** is the total of the amounts given by the calculations required by steps 1 to 3 (see chapter 3.3 below), (i.e. income, gains and deemed income) including any deemed I-E receipt by virtue of the minimum profits test (see chapter 3.6).

3.3. The I–E basis

Section 73 provides a prescriptive methodology for determining I-E taxable profits. This involves a 6 step process which is shown in the following table. Further detailed guidance in respect of each step is set out below.

		£
Step 1:	BLAGAB Income	X
Step 2:	Net BLAGAB chargeable gains	X
Step 3:	BLAGAB deemed I-E receipts	X
Step 4:	Subtotal	X
Step 4:	Net BLAGAB non trading deficits	(X)
Step 4:	**Total Income (I)**	**X**
Step 5:	Less: BLAGAB management expenses (E)	(X)
Step 6:	I-E Profit/(excess BLAGAB expenses)	X/(X)

Step 1

Step 1 is to calculate the income chargeable for the accounting period. See chapter 3.3.1 for further details.

Step 2

Step 2 is to calculate BLAGAB chargeable gains for the accounting period. See chapter 3.4 for further details.

Step 3

Step 3 is to calculate any 'BLAGAB deemed I-E receipts'. This includes the following:

- 'BLAGAB deemed I-E receipts not taxed elsewhere (see chapter 3.3.6); and

- any taxable amount arising under the minimum profits test (see chapter 3.6).

Step 4

Step 4 is to add together the amounts calculated in steps 1 – 3.

This subtotal is then reduced by the relievable amount of any non trading deficit which the company has for the accounting period under section 388 of CTA 2009 (loan relationship and derivative contracts). The result is 'I'.

See chapter 3.6 for discussion regarding the original interaction of section 73 Step 4 (section 388 of CTA 2009) with the minimum profits test in section 93 which has now led to the inclusion of the word 'relievable' in Step 4 by Finance Act 2016.

In this Step 'the relievable amount' of a non-trading deficit now means so much of the deficit as does not exceed the total of–

- the amount given by the calculation required by step 1,
- the amount given by the calculation required by step 2, and
- any amount of an I-E receipt under section 92 brought into account under step 3.

This now restricts the offset of the non-trading deficit so that it cannot offset the section 93(5)(a) income generated by the minimum profits test itself.

Step 5

Step 5 is to calculate adjusted BLAGAB management expenses of the accounting period, to give 'E'. Guidance in relation to this calculation can be found in chapter 3.3.2.

Step 6

Step 6 is to subtract E (per step 5) from I (per step 4).

Section 73 explicitly provides that in circumstances where 'E' is a negative figure, the effect is to increase the calculation. (E can be negative where there are reversals of expenses in the accounts, or (perhaps more probably) where there has been a surrender or offset of the BLAGAB trade loss with an equivalent reduction in expenses.)

If the result of Step 6 is positive, that is the I–E profit chargeable under section 68.

If the result of Step 6 is negative, it is termed excess BLAGAB expenses and the amount becomes an element of the adjusted BLAGAB management expenses, coming in at Step 5 of section 76 in the next period.

3.3.1. Income and gains

Section 74 provides the definition of income that should be brought into account:

a. property business income within section s86(4) (see chapter 3.3.3);
b. credits in respect of any loan relationships (see chapter 3.3.4);
c. credits in respect of derivative contracts (see chapter 3.3.4);
d. credits in respect of intangible fixed assets (in accordance with Part 8 of CTA 2009)
e. credits in respect of company distributions (in accordance with Part 9A of CTA 2009)
f. omitted with effect 6 April 2014;
g. income from the sale of foreign dividend coupons (in accordance with Chapter 6 of Part 10 of CTA 2009);
h. annual payments not otherwise charged (in accordance with Chapter 7 of Part 10 of CTA 2009);
i. overseas income chargeable under Chapter 8 of Part 10 of CTA 2009;
j. income in relation to section 1173 CTA 2010 (miscellaneous charges) (excluding section 752 CTA 2009 (non trading gains on intangible fixed assets) (see chapter 3.3.5);
k. income of the company chargeable under regulation 15 of the Unauthorised Unit Trusts (Tax) Regulations 2013

The references listed above are the respective charging provisions for the types of income. Those charging provisions are, for BLAGAB, replaced by section 68. The measurement of the income is largely provided by those charging sections and related provisions, subject to amendments in Part 2.

Intangible fixed assets

Life assurance business used to be excluded from Part 8 of CTA 2009 except as regards royalties (section 902 of CTA 2009, repealed by Schedule 16 FA 2012).

Intangible fixed assets are now within the regime, except that expenditure incurred before 1 January 2013 is excluded – the assets are within, the cost is not. Section 88(3)(b) and (6)(b) together provide that:

- BLAGAB credits and BLAGAB debits on intangible fixed assets (non-trading) are netted to produce a single figure;
- if the figure is a net credit, it is included as income at item (d) above;
- if the figure is a net debit, it is included as a deemed expense at Step 3 of section 76.

See further in chapter 6.5.

Company distributions

Section 931A of CTA 2009 provides that dividends are taxable if not exempt. The rest of Part 9A of that Act goes on to make most dividends exempt – in particular, distributions in respect of portfolio holdings where the recipient holds less than 10% of the share capital of the payer. Even if the life assurance company cannot benefit from that class of exemption, others may be available. As a consequence, the amount of taxable distributions (included as part of income at (e) above) should normally be small.

(Note this exemption does not apply for the BLAGAB trade profit calculation. See further in chapter 3.5).

BLAGAB non-taxable distributions come into consideration in calculating the policyholders' share of profits (see chapter 3.2) and the minimum profits test (see chapter 3.6).

3.3.2. Management expenses

Section 76 provides a five step process to determine the adjusted BLAGAB management expenses deductible in calculation of the I-E profit or excess BLAGAB expenses, as described in chapter 3.3.1.

The expenses which are deductible are those that meet the definition of 'ordinary BLAGAB management expenses' and are brought into account as debits in the accounts drawn up by the company in accordance with generally accepted accounting practice (section 77(2)). Any amounts credited to an expense account are therefore not included in the ordinary BLAGAB management expenses and need to be adjusted for at Step 4.

Section 77(4) makes specific disallowances in calculating 'ordinary BLAGAB management expenses' including ignoring expenses deductible under other relevant rules as per section 78(2) and 'excluded amounts', namely:

- amounts of a capital nature (paragraph (a))
- reinsurance premiums (paragraph (b))
- refunds of premiums (paragraph (c))
- profit commissions and profit participations (however described) (paragraph (d))
- a liability of the company to pay an amount of commission or other expenses so far as exceeding the amount which it could reasonably be expected to pay if sections 68 and 69 were not applicable (paragraph (e))
- non-commercial amounts payable by the company (paragraph (f))
- amounts payable in connection with a policy or contract to a policyholder or annuitant under the policy or contract or to any other person entitled to receive benefits under the policy or contract (paragraph (g)).

Where acquisition expenses (as per section 80 explained below) incurred in the accounting period fall to be debited in successive accounts drawn up for successive periods of account, those expenses are treated as if they were all debited in the accounts drawn up for the first of the periods.

Sections 81 and 82 are also in point when it comes to calculating 'ordinary BLAGAB management expenses' as directed by section 76 Step 1. Section 81 details some relevant permissive rules that also apply as they would apply to a company with investment business and section 82 details some further restrictions regarding unpaid remuneration and car hire charges that apply as they would apply to a company with investment business.

However, an amount is only treated as a BLAGAB management expense as a result of section 81 if it would not have otherwise been treated anyway. This is to avoid a double relief for the expense.

Step 1

Step 1 is to calculate the ordinary BLAGAB management expenses of the company which are referable to the accounting period in question.

Section 77(2) provides that BLAGAB management expenses are those which are expenses of management of the company's long term business which are attributable to BLAGAB in accordance with generally accepted accounting practice, debited in accounts drawn up by the company for a period of account. Note that the requirement for the amount to be debited means that credit amounts are not included (or netted) in arriving at the Step 1 figure, and instead come into consideration at Step 4.

Where a period of account coincides with or falls wholly in an accounting period, the expenses brought into account for the period of account are the expenses referable to the accounting period. In respect of any other period of account, the expenses are time apportioned to the accounting period in accordance with section 1172 CTA 2010 and then become referable to the accounting period (section 77(8) and (9)).

In making the calculation, expenses that are deductible under other relevant rules as defined at section 78(2) are ignored. This covers amounts that are allowable elsewhere in the computation, namely expenses relating to UK property business, amounts deductible by virtue of section 92(3) or section 272 CTA 2009.

Additionally some statutory deductions, e.g. for pension deductions on a paid basis, are deemed to be Step 1 expenses.

Step 2

If the expenses calculated at Step 1 include acquisition expenses, Step 2 is to deduct from the amount at Step 1, an amount equal to six sevenths of the acquisition expenses of the period. This leaves one seventh deductible in the period in accordance with section 79(2). The meaning of acquisition expenses is discussed below.

Deferred acquisition expenses from earlier periods come back in at Step 3.

Step 3

Step 3 is to calculate the level of certain specified deemed expenses:

- spreading of acquisition expenses from previous periods which are now deductible in the current period in accordance with section 79;
- relief for annuities (see chapter 6.6) – including old annuities;
- losses in relation to property business (section 86 businesses);
- excess of debits in respect of intangibles;
- any excess of miscellaneous losses;
- capital allowances on management assets (including any structure & buildings allowances);
- non-trading deficit on BLAGAB loan relationships carried forward;
- remediation additional allowances; and
- deductible manufactured dividend payments.

Note that originally the list of BLAGAB deemed management expenses in section 78(3) also referenced section 1080(2) of CTA 2009 (30% additional deduction for qualifying R&D expenditure of company carrying on life assurance business), but this has now been omitted by Finance Act 2013. Although HMRC were encouraged to set out their views in relation to R&D tax credits in the recent issuance of their Life Assurance Manual, no such reference is made. In practice however most expenditure of this nature is incurred in service companies within insurance groups.

Step 4

Step 4 details the 'basic amount' which is a sub-total at this point in the calculation. The basic amount is found by adding together the amount given by the calculation at Step 1, adjusted where necessary by Step 2, and the amount given by the calculation at Step 3.

In addition, any amount which is a reversal of an amount of expense included at Step 1 (as read with Step 2) or Step 3 in a previous accounting period (section 78(4)) or any BLAGAB trade loss relieved for the accounting period via current year/carry back loss offset or group relief (section 78(5)), is to be deducted.

A reversal of an amount of expense would include, for example, the release of a provision for which a deduction was taken in the BLAGAB computation in the year the provision was made. (This treatment of 'reversed' expenses arises from the requirement that ordinary expenses are debits – so a different treatment is needed for any credits in an expense item.)

A BLAGAB trade loss is relieved per section 78(5) if it is utilised/deducted under:

- section 37 of CTA 2010 (sideways relief) as applied by section 123;
- Chapter 4 of Part 5 of that Act (group relief) as applied by section 125;
- section 124B of FA 2012 (relief for excess carried forward post-1 April BLAGAB trade losses); or
- Chapter 3 of Part 5A of CTA 2010 (group relief for carried-forward losses) if the surrender period to which the claim relates is the accounting period in question.

The amount of restriction is the amount of the loss utilised. The restriction applies after the acquisition expense spreading and thus does not need allocation. It is clear that this adjustment may make E negative – so that it increases the I-E profit when deducted (see Step 6 of section 73).

In summary the position at this point is:

Basic amount = ordinary BLAGAB expenses (Step 1) less six sevenths of acquisition expenses (Step 2) plus deemed expenses (Step 3).

Adjusted basic amount = basic amount less reversals and trade loss utilisation (Step 4).

Step 5

Step 5 is where any carried forward amount is added to the basic amount (or the adjusted basic amount) calculated at Step 4.

The carried forward amount is any excess expenses brought forward from prior periods as a result of sections 73 and 93. This therefore includes any amounts previously taxed as excess adjusted BLAGAB trade profits in prior periods under section 93(5).

The resulting amount is the amount of adjusted BLAGAB management expenses of the company for the accounting period. If the resultant amount is higher than the amount from which the deduction is to be made (BLAGAB income and gains less net relievable non-trading deficit), the excess is carried forward as excess management expenses and brought into the calculation of the expenses deduction in the subsequent accounting period in accordance with Step 5.

Acquisition expenses – Sections 79 & 80

For BLAGAB, an allocation between acquisition and other expenses is required. Section 80 defines 'acquisition expenses' to be expenses attributable to BLAGAB business which fall within one of the following categories (section 80(2)):

- commissions (however described) other than commissions for persons who collect premiums from house to house;
- any other expenses payable solely for the purpose of the acquisition of business; and
- so much of any other expenses payable partly for acquisition purposes and partly for other purposes.

These acquisition expenses are then adjusted for the amount of reinsurance commissions and any repayments or refunds (in whole or in part) of acquisition expenses taxed by section 92 (section 79(3)). Note that the adjustment here does not reduce the overall expenses, merely the allocation between acquisition and non – acquisition. The reason for the adjustment is that the section 92 charge applies without spreading, so the equivalent amount of expenses should not be spread either.

The relief for the remaining balance is obtained over seven years (section 79(4) to (7)). Six sevenths of the current year amount is disallowed at Step 2 of section 76, and brought into account one seventh at a time over subsequent periods until exhausted – although with a proportionate reduction for a short accounting period.

Details will be available from previous computations of prior year acquisition expenses eligible for relief in the current year and spreading will also be applicable on brought forward balances.

While commissions in respect of 'persons who collect premiums from house to house' (a phrase originally introduced following the merger of industrial business with ordinary business for tax purposes) are not automatically to be regarded as acquisition expenses, they may still count as acquisition expenses within the subsequent categories above (section 80(3)). The exclusion of such commissions from automatic treatment as acquisition expenses continues to recognise, as was the case when industrial business was taxed separately, that a proportion of those commissions are as payment for the collection of premiums, rather than for the selling of business.

Section 80(4) refers to the acquisition of business to include the securing of the payment of increased or additional premiums or consideration in respect of an insurance or annuity contract already made.

Whilst some items of expenditure will clearly be acquisition expenses (e.g. most sales force remuneration), the allocation of other expenses only partly (or only arguably) connected with the acquisition of business can be an area of contention. Under the post-2013 rules this allocation must be done on a commercial basis as with income and gains.

Accounts spreading of acquisition expenses

The accounts spreading of acquisition expenses applies for tax as follows:

- for the purposes of BLAGAB trade profits, and the trading profits of the non-BLAGAB long-term business, the accounting figures for expenses should be followed;
- for the purposes of ascertaining the ordinary BLAGAB management expenses, the accounts spreading of acquisition expenses (as defined in section 80) is disregarded so that:
  - the whole amount of the acquisition expense is treated as arising in the first accounting period;
  - that amount is then spread in accordance with section 79; and
  - amounts in the accounts in respect of those expenses in later years are disregarded (for the I–E rules).

Anecdotally based on recent industry discussions relevant to IFRS17 and a suggestion by HMRC, there is a question mark over the future necessity for such a tax rule considering the industry business profile of more recent years.

3.3.3. Property businesses

Section 86 provides that a company is treated as carrying on a separate UK property business, or as the case may be overseas property business, where it holds land/property otherwise than for the purpose of the company's long term business. The legislation provides that each of the following is treated as a separate business:

a. exploitation of land which is matched to BLAGAB liabilities (all BLAGAB);
b. exploitation of land which is matched to other long term business liabilities (none BLAGAB);
c. exploitation of land which is not matched to long term business liabilities (allocable to BLAGAB under Chapter 4 of Part 4 of CTA 2010).

There may therefore be six separate property businesses (a UK property business and an overseas property business for each of (a) to (c) above); four of those businesses (i.e. other than the two type (b) businesses) may have an allocation to BLAGAB.

Losses

To the extent that a property loss is referable to the company's BLAGAB business, the normal loss relief rules in Chapter 4 of Part 4 of CTA 2010 are disapplied per section 87. Instead:

- the losses allocated to BLAGAB are offset against property business profits allocated to BLAGAB; then
- if there is an amount of loss not so offset, it is treated as deemed BLAGAB management expenses in Step 3 of section 76 and then step 5 of section 73 for calculating I-E taxable profits.

The group relief position is less clear. Nothing explicitly overrides the provisions of Part 5 of CTA 2010, and the references to property losses do not refer to amounts relievable under Chapter 4 of Part 4. However, HMRC might be expected to argue that the property loss is either (mandatorily) offset against property profits or (mandatorily) becomes part of E as described above and is therefore taken into account (mandatorily) in section 73 to compute the I–E profit or excess BLAGAB expenses. The prevention of double relief in section 137(7) of CTA 2010 may then deny group relief for that amount.

3.3.4. Loan relationships and derivatives

Net credits from loan relationships and derivative contracts referable to BLAGAB are brought into the I–E computation as part of the income at Step 1.

Net debits give rise to a non-trading deficit which is relievable as follows:

- it must be offset against other income and gains at Step 4 of the section 73 calculation (section 388 of CTA 2009);
- it may be carried back and offset against of the loan relationship (and derivative contracts) net credits for the previous period (or up to three accounting periods, within the previous 12 months) (section 389 of CTA 2009);
- any balance not otherwise relieved becomes a deemed management expense at Step 3 of section 76 for the next accounting period (section 391 of CTA 2009).

The deficit cannot be surrendered by way of group relief.

Treatment of a non-trading deficit

As noted above, the offset under section 388 of CTA 2009 against other BLAGAB income and gains is mandatory. Section 73 is very clear about how the non-trading deficit is dealt with as part of Step 4.

A life assurance company may make a claim under section 389 of CTA 2009 to offset all or part of any deficit not so offset against 'available profits' for up to three accounting periods in the preceding 12 months on a LIFO basis. Available profits are the BLAGAB loan relationship (and derivative contracts) profits, less a deduction for expenses not offset against other BLAGAB income and gains. (The deduction is calculated by offsetting expenses against the other BLAGAB income and gains, but not so as to create a negative amount. Any remaining expenses are then set against the BLAGAB loan relationship profits to give the available amount.) In essence, the available profits are the lower of:

- the I–E profit; and
- the BLAGAB loan relationship profits for the period(s) before the section 389 carry-back.

The minimum profits test is not recomputed following a carry-back. Nor does it affect the shareholders' share of BLAGAB chargeable gains or allowable losses.

Section 73 is silent on the operation of the carry-back provision (section 389 of CTA 2009). The form of the carry-back is to reduce the BLAGAB loan relationship credits, so the effect is seen simply in a reduction in the Step 1 income.

More details on loan relationships and derivatives contracts are in chapter 6.4.

3.3.5. Miscellaneous income

Section 89 provides a definition for 'BLAGAB miscellaneous income' and 'BLAGAB miscellaneous losses'. (For many companies this may not be a significant heading).

BLAGAB miscellaneous income is defined as income of the company arising from its long term business, which is:

- chargeable under any provision to which section 1173 of CTA 2010 applies (other than section 752 of CTA 2009 (miscellaneous income)) and
- is referable to the company's BLAGAB business.

BLAGAB miscellaneous losses are defined as losses of the company arising from its long term business which:

- arise from miscellaneous transactions and
- are referable to the company's BLAGAB business.

Section 1173 of CTA 2010 is a list of charging provisions in the Corporation Tax Acts under the heading 'miscellaneous charges'. In section 89 it provides a catch-all for income which isn't covered elsewhere. The exceptions noted above are amounts which should not be included in that catch-all, as below.

Section 752 of CTA 2009 is the charging provision for non-trading gains on intangible fixed assets – these are excluded from miscellaneous income since such gains are already specifically included in income (section 74(1)(d)). Regulation 18(4) of the Offshore Funds (Tax) Regulations 2009 is the provision bringing the charge to tax into Chapter 8 of Part 10 of CTA 2010 (and thus section 1173). Regulation 18(4) should not apply for income (or gains) since Regulation 26 excludes assets of a long-term insurance fund from the charge – and it does not therefore need to be excluded in the definition of miscellaneous income.

Thus in effect the definitions of miscellaneous income and miscellaneous losses cover the same transactions.

Where a company has miscellaneous income per the above, this income should be included in the calculation of I–E taxable profits only to the extent that miscellaneous income exceeds miscellaneous expense.

Where the company has excess miscellaneous losses over miscellaneous income in an accounting period, this excess is carried forward to the next accounting period and is treated as a deemed expense.

Thus the summary is:

- Take the company's miscellaneous transactions;
- Calculate the incomes and losses from those transactions and obtain the net result;
- If the net result is positive it is income (section 74(1)(j));
- If the net result is negative it is a deemed expense (section 78(3)).

3.3.6. Deemed I–E receipts

Step 3 of the six step process for calculating I–E taxable profits (see chapter 3.3.1) brings BLAGAB deemed I–E receipts into account. Two provisions are specified:

- section 92; and
- section 93(5)(a).

Section 93(5)(a) is the minimum profits test deemed income and is covered in chapter 3.6.

Section 92 provides that where three conditions are met, an 'appropriate amount' of the receipt is a deemed I–E receipt for the purposes of step 3. The three relevant conditions are:

- an insurance company has receipts that are taken into account in calculating BLAGAB trade profits or loss:
- the receipts would not fall within the charge to tax absent the section; and
- the receipts are not 'excluded receipts'.

To the extent that all three of the above conditions are met, an 'appropriate amount' is brought into account.
The 'appropriate amount' is determined by deducting expenses from the receipts so far as it is necessary for calculating the full amount of profits. Since a receipt must be included in the BLAGAB trade profit for the section to apply, it must have been allocated to BLAGAB under Chapter 7; there is no specific provision identifying the necessary expenses but it is reasonable to expect that the expenses would also have been allocated to BLAGAB under Chapter 7.

For the purpose of this section, 'excluded receipts' are:

- premiums
- sums received under reinsurance contracts (not including reinsurance commissions and sums calculated by reference to the company's BLAGAB expenses)
- sums which do not fall within the charge to tax because of a specific exemption
- payments received under Financial Services Compensation Schemes
- payments received from other insurance companies to enable the company to meet its obligations to policyholders.

For many companies the principal application of the section will be to charge reinsurance commissions as deemed income.

3.4. BLAGAB chargeable gains

A company's BLAGAB chargeable gains are included in the calculation of I–E profit at Step 2. (Note that the charge to tax on BLAGAB chargeable gains applies through the BLAGAB I–E charge in section 68 rather than the usual charging provisions. However the gains or losses are all computed in accordance with the provisions of TCGA 1992.)

Section 75 sets out a two step process as below.

Step 1

Calculate gains arising from disposals in the year of assets held for the purposes of the long-term business and referable to BLAGAB.

Step 2

Deduct from those gains any allowable losses arising from disposals in the year of assets held for the purposes of the long-term business and referable to BLAGAB, and any BLAGAB allowable losses from previous years not already relieved.

The net amount (if positive) is the amount of BLAGAB chargeable gains adjusted for allowable losses. This is before any relief for non-BLAGAB allowable losses under section 95 (see chapter 3.4.1).

The calculation is therefore:

	£
BLAGAB chargeable gains of the period	x
Less:	
BLAGAB allowable losses of the period	(x)
BLAGAB allowable losses brought forward	(x)
Net BLAGAB chargeable gains	**x**

The key points to note in relation to the calculation above are:

- the deduction for capital losses of the period and BLAGAB capital losses brought forward can reduce BLAGAB chargeable gains of the period to nil but no further (section 75(2); and
- BLAGAB chargeable gains includes BLAGAB chargeable gains from equities, properties and unit trust deemed disposals.
- Gains on assets forming part of the long-term business fixed capital are not included as BLAGAB gains (section 75(3)).

There are special rules set out in sections 212 and 213 of TCGA 1992 for gains to be brought into account in respect of holdings in authorised unit trusts, open-ended investment companies and certain offshore funds. Sections 212 and 213 must be applied together with the other provisions of TCGA 1992. See further below.

Sections 212 and 213 of TCGA 1992

A life assurance company is deemed at each year-end to have a disposal and reacquisition of its holdings in certain collective investments ('section 212 assets'). The disposals and reacquisitions are at market value, and give rise to capital gains and losses.

Section 212 assets are:

- authorised unit trusts (which for this purpose includes OEICs),
- interests in offshore funds;
- and UK real estate investment trusts (REITs – within the meaning of Part 12 of CTA 2010).

Section 212 will not apply to such assets if they are taxed as loan relationships under sections 487 to 497 of CTA 2009.

Any capital gains or losses arising on the deemed disposals which are allocated to BLAGAB under Chapter 4 (sections 100 and 101) will be chargeable gains or allowable losses.

Section 213 then spreads the BLAGAB chargeable gains over seven years.

Where net allowable losses arise on the deemed disposals, the life assurance company may make a claim to carry back the losses (or part of the losses) against net BLAGAB chargeable gains on the deemed disposals in the previous two accounting periods. The spreading then applies (from the earlier period) on the net chargeable gains after carry-back. Any amount for which no claim is made is spread over seven years similarly to the gains.

After the effect of the spreading, the one seventh of the current period chargeable gain, and the one sevenths of the brought forward chargeable gains for the previous six periods, as adjusted for losses, are amalgamated into a single figure and treated as a single chargeable gain or allowable loss in the period. This is then available for set off against allowable losses and chargeable gains in the period not arising on section 212 disposals.

3.4.1. Interaction with non-BLAGAB chargeable gains and allowable losses

Where losses are suffered in the non-BLAGAB computation it is possible to offset the losses against the shareholder share of BLAGAB chargeable gains. Section 95 covers the deduction of non-BLAGAB allowable losses. The approach is as follows:

- calculate the BLAGAB I-E profit without deducting non-BLAGAB allowable losses;
- calculate the non-BLAGAB allowable losses which are deductible in accordance with section 210A(2) of TCGA 1992 from the shareholders' share of BLAGAB chargeable gains; then
- allow those losses to be deducted from the BLAGAB chargeable gains, but only to the amount of the smaller of the BLAGAB I-E profit as calculated above and the shareholders' share of BLAGAB chargeable gains.

Relief for non-BLAGAB losses vs. BLAGAB gains

Somewhat confusingly perhaps, the terminology of section 210A of TCGA 1992 refers to 'non-BLAGAB' chargeable gains and allowable losses meaning in effect gains and losses of assets not held for the long-term business. The term is 'non-BLAGAB' not 'non-BLAGAB long-term business'.

The section firstly sets out how relief is given for non-BLAGAB allowable losses:

- the losses are allowable as a deduction from the shareholders' share of the BLAGAB chargeable gains; but
- are not otherwise deductible from BLAGAB chargeable gains.

The shareholders' share of BLAGAB chargeable gains (if there is an I–E profit) is calculated as (section 210A(10A) and (10C)):

$$\frac{\textbf{Shareholders' share of the I-E profit}}{\textbf{The I-E profit}} \times \textbf{BLAGAB chargeable gains}$$

'Shareholders' share of the I–E profit' (not a defined term) is the part of the I–E profit which is not the policyholders' share under section 103 FA 2012. The I–E profit is calculated on the assumption there is no offset of non-BLAGAB allowable losses. If there is no I–E profit then the shareholders' share is nil (section 210A(10B)) –this does not actually affect the calculation for the relief for non-BLAGAB allowable losses which would be nil anyway if there is no I–E profit.

The restriction on non-BLAGAB allowable losses refers only to BLAGAB chargeable gains not the net amount less any BLAGAB allowable losses. This may give an unexpected result where the apparent relief under section 210A exceeds the amount of BLAGAB chargeable gains adjusted for allowable losses. For example:

	£
BLAGAB chargeable gains of the period	1,000
BLAGAB allowable losses of the period	(700)
I–E profit	5,000
Policyholders' share of I–E profit	3,000
'Shareholders' share' of BLAGAB chargeable gains (5,000 – 3,000)/5,000×1,000	400
Non-BLAGAB allowable losses	**800**

Apparently 400 of non-BLAGAB allowable losses could (prima facie) be deducted from the BLAGAB chargeable gains of the period – reducing the I-E profit from 5,000 to 4,600 (comfortably above nil). Section 95 actually refers to 'use of non-BLAGAB allowable losses to reduce I-E profit' as if it were a deduction from the I-E profit itself (Step 7 of six perhaps). Section 73 Step 2 requires the inclusion of BLAGAB chargeable gains adjusted for allowable losses – which is the figure given by section 75 without a mention of section 95. However section 95 does specify that the non-BLAGAB losses are to be deducted from the BLAGAB gains – which have already been reduced by 700 so only 300 remain. This position appears to be unclear.

Where losses are carried back to the period

Section 210A(11) provides that the calculation of the shareholders' share of chargeable gains for a period ignores:

- losses carried back under section 213(3) (losses on deemed disposals of unit trusts etc.);
- losses carried back under section 202(9) (terminal losses on mineral leases); and
- a non-trading deficit carried back under section 389(1) of CTA 2009 (which would affect the I–E profit). In effect the calculation is frozen based on the current year figures only.

Relief for BLAGAB losses vs non-BLAGAB gains

A similar rule applies where there are BLAGAB allowable losses per section 210A(3). In effect the 'shareholders' share' of the net BLAGAB allowable losses can be offset against non-BLAGAB chargeable gains. The 'shareholders' share' of BLAGAB allowable losses is calculated as for BLAGAB chargeable gains (including the rule that where there is no I–E profit the share is nil).

In broad terms the calculation produces a 'permitted' amount which can be offset in the period against non- BLAGAB chargeable gains. The process goes:

- take the 'permitted amount' for the immediately previous period, less the amount offset in that period; this may give a result of nil;
- if the current year's BLAGAB chargeable gains exceeds current year BLAGAB allowable losses, adjust the net permitted amount downwards in proportion to the brought forward losses utilised in the current year;
- if the current year's BLAGAB chargeable gains are less than current year BLAGAB allowable losses, adjust the net permitted amount upwards by the shareholders' share of BLAGAB allowable losses less the shareholders' share of BLAGAB chargeable gains.

That gives a permitted amount which can be offset against non-BLAGAB chargeable gains.

Notably HMRC at LAM03420 state that it would also be possible to use some or all of the permitted amount of BLAGAB allowable losses against chargeable gains reallocated to a company under the provisions of section 171A and section 171C TCGA92.

Example

	Current year gains/ (losses)	Losses available for offset	Total allowable losses
2021 BLAGAB available losses before offset vs. non-BLAGAB		1,500	4,600
Amount offset in 2021 against non-BLAGAB chargeable gains		(600)	(600)
BLAGAB allowable losses b/fwd unutilised into 2022		**900**	**4,000**
2022 BLAGAB chargeable gains	3,000		3,000
2022 BLAGAB allowable losses	(2,000)		400
	1,000		
Brought forward allowable losses offset 1,000 (of 4,000 total)	(1,000)		(1,000)
BLAGAB net chargeable gains 2022	**0**		
Reduce the net permitted amount by 25% (1,000/4,000)		(225)	
Permitted amount for 2022		675	3,000
Amount offset in 2022 against non-BLAGAB chargeable gains		(200)	(200)
BLAGAB allowable losses b/fwd unutilised into 2023		**475**	**2,800**
2023 BLAGAB chargeable gains	2,000		
2023 BLAGAB allowable losses	(3,000)		
Net	**(1,000)**		1,000

Shareholders' share say 40%	400	
Permitted amount for 2023	875	3,800
Amount offset in 2023 against non-BLAGAB chargeable gains	(575)	(575)
Permitted amount carried forward	**300**	**3,225**

3.4.2. 'Box transfers' and related provisions

Where an asset (or part of an asset) held by a UK life insurance company ceases to be within one of the long term business categories or moves category then this is treated as a chargeable gains disposal and reacquisition for consideration equal to the fair value of the asset (or part) at that time.

The categories are (section 116 FA 2012):

- assets matched to BLAGAB liabilities;
- assets matched to other long term business liabilities;
- assets held for the purposes of long term business relating to any with-profits fund, which are not matched to long term liabilities; where a company has more than one with-profits fund then the assets which are held by it for the purposes of a particular with-profits fund are treated as a separate category;
- assets held for the purposes of long term business but which are not matched to long term liabilities or within a with-profits fund.

There is also a deemed disposal where an asset (or part of an asset) held by a UK life insurance company ceases to be within one of the following, broader categories and comes into another:

- assets held for the purposes of long term business;
- other assets.

The long-term business fixed capital of an insurance company should be treated as assets held by the company otherwise than for the purposes of its long-term business (i.e. other assets).

(The reason for the two-tier category structure may be the application of the section to a company to which section 66(4) or (5) or 67 applies – i.e. where the company is not within the I–E charge. In that case the first set of categories is ignored and only the second 'higher' tier applies.)

A matched asset is where some or all of the income is specifically referable to BLAGAB or non-BLAGAB business, this will primarily apply to linked policies however there may be assets backing other types of business where it could be argued that the assets are matched. However the definition of 'matched' requires there to be a contractual requirement underlying the allocation methodology.

A number of life assurance companies had to amend their capital gains tax systems in order to track the allocation of assets between with-profits funds under these new rules post 2013.

Similar rules apply for overseas life insurance companies (see chapter 6.8).

Intra-group transfers

Sections 171 and 173 of TCGA are disapplied where a UK life assurance company acquires an asset which is in one of the long-term business categories in the company immediately after acquisition, or disposes of an asset which was in one of those categories immediately before. Thus a no-gain no-loss intragroup disposal is not available. This applies even if the asset would be in an equivalent category in the transferor or transferee (unlike the position for transfers of business below).

A similar provision applies for an overseas life insurance company (see chapter 6.8).

Transfers of business

As discussed in chapter 6.1, usually under an insurance business transfer scheme assets are transferred at no-gain no-loss under section 211 of TCGA 1992. However, there is a deemed disposal where an asset moves between categories (section 118).

For this purpose, the categories are (for a UK life assurance company):

- the long-term business categories; and
- assets not held for the long-term business.

It appears that if a company has separate with-profits funds categories, then moving an asset between those funds would also be a category move.

This provision applies similarly for an overseas life insurance company (see chapter 6.8).

3.4.3. Share pooling

The share pooling rules (section 104 TCGA 1992) require securities of the same class to be treated as a single asset for chargeable gains purposes. This section modifies these rules for UK life insurance companies so that a holding in securities is only pooled when they are within the same long term business category; these categories are equivalent to the box transfer rules above (section 119):

- securities matched to BLAGAB liabilities;
- securities matched to other long term business liabilities;
- securities held for the purposes of long term business relating to any with-profits fund, which are not matched to long term liabilities; where a company has more than one with-profits fund then the assets which are held by it for the purposes of a particular with-profits fund are treated as a separate category;
- securities held for the purposes of long term business but which are not matched to long term liabilities or within a with-profits fund;
- any remaining securities are treated as a separate holding which is held otherwise than for the purposes of the company's long term business

These rules do not apply if the company is subject to tax on a trading profits basis (section 35 of CTA 2009) on the whole of its long-term business – i.e. a company to which section 66(4) or (5) or 67 applies where the company is not within the I-E charge. Where this is the case the share pooling rules apply to two categories only: securities held for the purposes of long term business and any remaining securities.

A distinction is required between a holding in securities that would be regarded as a 1982 holding for chargeable gains purposes and section 104 holding (i.e. post 1982 holdings). These holdings should be treated as separate holdings when applying the long term business categories set out above (section 121).

A 1982 holding has the same meaning as section 109 TCGA 1992 and a section 104 holding has the same meaning as in section 104(3) of TCGA 1992 (section 121(5)).

3.5. BLAGAB trade profits

Although the charge to tax on BLAGAB is on the I–E profit, it is (unless the company is mutual) also necessary to perform a BLAGAB trade profit computation. This is for the following:

- if it produces a profit, there are calculations required under –
  - section 93 (minimum profits test – see chapter 3.6); and
  - sections 103 to 105 (policyholders' share of profits – see chapter 3.2);
- if it produces a loss, it may be utilised in a number of ways (see chapter 3.5.2).

Section 92 (deemed income) also operates by reference to the BLAGAB trade profits computation. A BLAGAB trade loss is computed in the same way as a BLAGAB trade profit.

3.5.1. Calculation of a BLAGAB trade profit

Starting point

The starting point of the BLAGAB trade profit computation is the BLAGAB profit before tax per the statutory accounts. Fiscal adjustments are then made to this figure to arrive at taxable BLAGAB trade profit/loss. The allocation of amounts to BLAGAB for trade profits purposes is discussed in chapter 4.2.

The fiscal adjustments may, amongst others, include:

- disallowable expenses
- deduction for capital allowances
- deduction for policyholder tax (see below)

- disallowance of any allocation to policyholders (i.e. bonuses) of a capital nature (see below)

Policyholder tax deduction

In calculating the BLAGAB trade profit, a tax deduction is allowed for current and deferred tax relating to policyholders, as follows:

- current tax – a tax deduction is available for the amount of corporation tax charged at the policyholders' rate of tax on the policyholders' share of the I–E profit for the period (section 106); this is derived from the computation, not the current tax figures in the accounts;
- deferred tax – the movement in the deferred policyholder tax balance for a period of account is calculated and if the amount is negative (i.e. a charge in the period) a tax deduction is available and if it is positive (i.e. a credit in the period) it is subject to tax (section 107); this is accounts-based.

The deferred policyholder tax has to be calculated in accordance with GAAP, accounted for in the accounts of the company and wholly attributable to policyholder tax.

An amount is wholly attributable to policyholder tax if it is a 'BLAGAB matter' and has been calculated wholly by reference to the policyholder rate of tax. A 'BLAGAB matter' is defined in section 108(3) as:

- excess BLAGAB expenses;
- acquisition expenses relievable in future periods (i.e. expenses deferred in accordance with section 79 and not yet included in the adjusted BLAGAB management expenses figure at Step 3);
- any other expense falling to be taken into account in the future under the I–E rules;
- BLAGAB allowable losses (as defined in section 210A of TCGA 1992);
- spread deemed disposal gains/losses on section 212 assets;
- amounts in respect of future disposals of assets which would be taken into account for BLAGAB chargeable gains or allowable losses. This should include, for example, unrealised gains and losses on capital gains assets.

If a deferred tax amount ceases to be wholly attributable to policyholder tax in a future period, a reversal of the tax deduction (or taxed amount) is required to be made in that future period – section 108(4).

Allocations to policyholders

Under *Last v London Assurance Corporation (2 TC 100)* it was held that a policyholder bonus was not deductible in the computation of profits. This case, dating from 1884, is the reason why a statutory deduction is required for bonuses when the approach for taxing BLAGAB, in particular, is to use the I–E profit for taxing returns to policyholders and shareholders, with the BLAGAB trade profits only looking to the return to shareholders. The rule is now in section 110.

There is no deduction however for a bonus of a capital nature:

- in respect of with-profits policies; and
- which has not been funded from an amount credited in the accounts of the company concerned or another company.

A payment made in connection with the reattribution of inherited estate is regarded as an amount of a capital nature specifically – section 110(4).

Dividends and other distributions

Regardless of whether a dividend or other distribution would be exempt under Part 9A of CTA 2009 – and in particular whether it is so exempt in the computation of the BLAGAB I–E profit – it must be included in the BLAGAB trade profits computation (section 111).

That does not apply to distributions of a capital nature.

Index-linked gilts

Sections 400 to 400C of CTA 2009, which give a deduction for the indexation of Index-linked gilts, do not apply in the computation of a BLAGAB trade profit (section 112).

Long-term business fixed capital

Similar to the treatment in the I–E computation, receipts or expenses arising from an asset which forms part of the long-term business fixed capital are left out of the BLAGAB trade profits computation (section 113 – see also chapter 5).

Capital allowances

Per the latest Life Assurance Manual, HMRC reiterated what their expectations are for Life and I-E companies claiming capital allowances. Arguably there was a change in policy in relation to the deductibility of investment capital allowances in computing BLAGAB trade profits.

When the recent LAM was being drafted, HMRC wrote:

'Prior to the introduction of the new life regime set out in Finance Act 2012 (FA12) it was common ground that there was no bar to the deduction of capital allowances on BLAGAB investment assets within the Notional Case I computation. At that time it was not possible to identify capital and revenue items within this calculation.

As a consequence of FA12 the insurer's accounts are now the basis for the BLAGAB trade profit calculation. The normal Corporation Tax rules apply, except where there is a specific statutory rule that modifies these rules. Capital allowances are not allowable on circulating assets. There is no statutory provision that modifies the BLAGAB trade profit to allow the capital allowances on investment assets to be deductible.

HMRC does acknowledge that, although this position is a natural consequence of the FA12 changes, the prevailing practice was to deduct these capital allowances and this was not challenged by HMRC. HMRC have now clearly set out its view on the deductibility of these allowances within LAM07150. However, HMRC will not seek to challenge capital allowances claims that were previously submitted for accounting periods ending prior to 31 December 2018.'

It has always been the case that non-BLAGAB trade computations cannot claim capital allowances on investment assets (an explicit rule denies this and always has done per section 545(3) Capital Allowances Act 2001). But if a case is made, LAM07150 does say that investment asset capital allowances could be claimed in the BLAGAB trade computation but the bar is set very high as most assets are circulating.

In contrast, for I-E, section 86 FA 2012 provides for separate property businesses. Within the context of those businesses, by contrast to the computation of BLAGAB trade profits, expenditure on fixtures will ordinarily be of a capital nature and so capital allowances can be claimed on investment assets.

3.5.2. Relief for BLAGAB trade losses

A BLAGAB trade loss arises if, applying the rules for calculating a BLAGAB trade profit, the result is a loss. In principle, it may be unclear whether 'normal' trade loss rules would apply to such a loss, since the charge to tax on trade profits – section 35 of CTA 2009 – is prevented from applying to BLAGAB (section 69). However, sections 123 to 125 explicitly give reliefs for the BLAGAB trade loss including taking into account the recent changes for pre and post-April 2017 losses brought about by the loss restriction rules. (See also chapter 6.2).

Sideways relief

Section 123 allows section 37 of CTA 2010 (relief for trade losses against total profits) to apply to a BLAGAB trade loss – this allows relief against:

- non-BLAGAB long term business trade profits;
- any general insurance business trade profits; and
- any non-insurance business income, profits or gains (including taxable income or gains from long-term fixed capital assets).

Section 123(2) makes it clear that this is despite section 35 of CTA 2009 being prevented from applying.

Note that the section 123 relief cannot be against the BLAGAB I–E result. In particular, section 127 prevents relief under section 37 of CTA 2010 (including via section 123) against the policyholders' share of the I–E profit.

Group relief

Section 125 allows Part 5 of CTA 2010 (group relief) to apply to a BLAGAB trade loss. Subsection (2) makes it clear that this is despite section 35 of CTA 2009 being prevented from applying.

Carry forward

The loss not surrendered under section 37 of CTA 2010 (as applied by section 123) is carried forward (under section 124 (for pre-April 2017 losses) and section 124A (for post-April 2017 losses)) and used to reduce the BLAGAB trade profit for subsequent periods for the purposes of:

- section 93 (minimum profits); and
- section 104 (policyholders' rate of tax).

The carried forward loss is after any group relief surrenders. There is no need for a claim for carry-forward and the offset is automatic under sections 93 and 104.

Relevant provisions of the Corporation Tax Acts including section 137(7) of CTA 2010 apply for the purposes of section 124 and section 124A. (Note that section 137(7) prevents double relief through group relief and carry forward.) Other relevant provisions are expected to include, for example, section 944 CTA 2010 (transfer of losses to a successor company) and section 674 CTA 2010 (change of ownership and major change in nature or conduct of trade).

Restriction on the BLAGAB loss

The BLAGAB trade loss available for sideways relief or group relief is restricted by deducting the 'relevant non- trading deficit' per section 126. The 'relevant non-trading deficit' is the deficit which the company has calculated by reference to credits and debits per the below:

- debits and credits on debtor loan relationships (i.e debt liabilities); and
- that are referable to BLAGAB.

This restriction is also relevant to post-April 2017 losses carried forward under section 124B as such a loss (or amount of a loss) is available for relief under section 124B only so far as it exceeds the amount of the relevant non-trading deficit.

Restriction on expenses

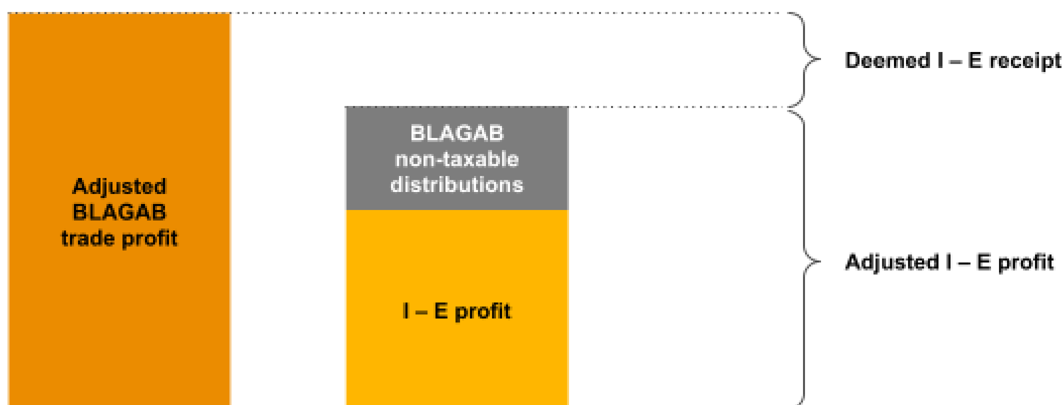
Where a BLAGAB trade loss is surrendered under either section 123 or 125 or relieved post a carry forward under section 124B of FA 2012 or Chapter 3 of Part 5A of CTA 2010, the amount so surrendered (in total) is deducted in computing the adjusted BLAGAB expenses (Step 4 in section 76, and see also section 78(5)). Note that Step 6 of section 73, in particular, indicates that E can be a negative amount (i.e. increasing the I–E result). Surrendering a BLAGAB trade loss would be one potential contributing factor to this.

3.6. Minimum profits test

Having calculated the BLAGAB trade profit, it is necessary to compare this with the BLAGAB I–E profit. If the adjusted BLAGAB trade profit exceeds the adjusted I–E profit or excess BLAGAB expenses then:

- an amount equal to the difference is a 'BLAGAB deemed I–E receipt' and brought into Step 3 of the I–E computation (section 93(5)(a)), and
- the same amount is carried forward into the next period's ordinary BLAGAB expenses calculation at Step 5 as a brought forward amount (section 93(5)(b)).

This is shown diagrammatically below:



The I–E profit is calculated without reference to the deemed income under section 93 (i.e. there is no circularity).

If the adjusted BLAGAB trade profit is less than the adjusted I–E profit or excess BLAGAB expenses then the minimum profits test does not bite and no amount needs to be added to the I–E computation as a deemed receipt nor is any expense carried forward into the next period's expense calculation.

Adjusted I–E profit/excess BLAGAB expenses

The adjusted I–E profit/excess BLAGAB expenses is the aggregate of:

- the I–E profit or excess BLAGAB expenses; and
- non-taxable distributions referable to BLAGAB under Chapter 7 and included in the BLAGAB trade profit.

Section 94(3) makes it clear that an excess BLAGAB expenses result may become an adjusted I–E profit after adding in the non-taxable distributions.

Adjusted BLAGAB trade profit

The adjusted BLAGAB trade profit is:

- the BLAGAB trade profit for the period; less
- any relief under sections 124, 124A or 124C for a BLAGAB trade loss from a previous period. The adjusted BLAGAB trade profit cannot be negative.

Interaction with non-trading loan relationship deficit

Originally the interaction with a non-trading loan relationship deficit was not straightforward. Where an insurer had a non-trading deficit which must be offset in accordance with Step 4 of section 73 and section 388 of CTA 2009, section 93 did not operate as expected.

The reason was that in calculating the 'notional income' for section 93(5)(a) the deficit was only deductible against the pre-section 93 income. However, in the real I-E profit (or excess BLAGAB expenses) calculation the section 93(5)(a) income came in at Step 3 of the computation and was therefore included in the amount against which the deficit was historically relievable. The result was that the deemed income could (effectively) be reduced or eliminated by however much of the deficit was not previously utilised.

To rectify this, there is now the inclusion of the word 'relievable' in Step 4 as a result of Finance Act 2016.

Step 4 section 73 now reads:

'Add together the amounts given by the calculations required by steps 1 to 3. Reduce the total of those amounts by the relievable amount of any non-trading deficit which the company has for the accounting period under section 388 of CTA 2009 (loan relationships and derivative contracts)'.

The result is 'I'

In this step 'the relievable amount' of a non-trading deficit now means so much of the deficit as does not exceed the total of –

a) the amount given by the calculation required by step 1,

b) the amount given by the calculation required by step 2, and

c) any amount of an I-E receipt under section 92 brought into account under step 3.

This therefore now restricts the offset of the non-trading deficit so that it cannot offset the section 93(5)(a) income generated by the minimum profits test itself which satisfactorily addressed the previous short-coming.

3.7. Non-BLAGAB long-term business trade profits

The position for a non-BLAGAB long-term business trade profit (or loss) is the same as for a BLAGAB trade profit, except as set out below.

Deduction for policyholder tax

The deduction for policyholder tax (sections 106 to 108) does not apply to non-BLAGAB long-term business.
(The deduction would probably be nil in any event – in particular the policyholder tax rate would not be applicable.)

Index linked gilts

Although the basic rule that sections 400 to 400C of CTA 2009 do not apply holds good for non-BLAGAB long- term business in general, there is an exception in relation to PHI business (section 112). Indexation is available on qualifying PHI loan relationships.

A loan relationship is a qualifying PHI loan relationship if:

- it is identified in the company's records as held for the purposes of Index-linked PHI business (i.e. where the benefits are linked to an official process index); and
- none of the credits or debits on the loan relationship are referable to BLAGAB (under Chapters 4 and 7).

The requirement that no amounts are referable to BLAGAB may be straightforward under the company's commercial allocation if the gilt is held for Index-linked PHI.

The total value of qualifying PHI loan relationships must not exceed the total Index-linked PHI liabilities – section 112(5).

Capital allowances

It has always been the case that non-BLAGAB trade computations cannot claim capital allowances on investment assets (an explicit rule denies this and always has done per section 545(3) Capital Allowances Act 2001).

Non-BLAGAB long-term business trade losses

The restrictions on BLAGAB trade losses do not apply to non-BLAGAB long-term business trade losses. The rules in Chapter 2 of Part 4 of CTA 2010 (trade losses) and Part 5 of that Act (group relief) apply to a non-BLAGAB long-term business trade loss.

Note that there is no equivalent for non-BLAGAB long-term business of the restriction for non-trading debtor loan relationship deficits. For non-BLAGAB long-term business, loan relationship debits and credits (on creditor and debtor relationships, and on derivative contracts) are trading debits and credits and are taken into account in computing the trade profit or loss.

4. Commercial allocation

An insurance company is taxed on its long-term business on a different basis depending on whether the business is BLAGAB or ‘other long-term business’ – referred to as ‘non-BLAGAB’.

BLAGAB is taxed on the I-E profit chargeable under section 68 and non-BLAGAB is taxed on a trading basis under section 35 CTA 2009/(section 71 FA 2012).

The apportionment rules for BLAGAB and non-BLAGAB business are set out separately for the I-E calculation and for trade profits. The I-E rules determine the amount of income/credits, losses/debits, chargeable gains/losses, and expenses to be apportioned to BLAGAB which are then brought into the I-E calculation at steps 1-5 of section 73. The apportionment rules for trade profits split the accounting profits and tax adjustments between the BLAGAB and non-BLAGAB trade profit computations.

These apportionment provisions are referred to as ‘commercial allocation’ in section 98 and section 101 (for I-E apportionment) and section 115 (for accounting profit apportionment). As the name implies, the intention is that the apportionments reflect the underlying commercial position – companies should follow their internal methodologies used in managing the business. The company’s regulatory returns are likely to set out the structure of the company and HMRC expect this to be reflected in the company’s commercial allocation method.

Although the methods for apportionment may differ there is an overriding requirement that there must be consistency between them.

Consistency

The consistency requirements are set out below:

- the section 98 method for allocating income, losses, and expenses (for I–E purposes) must be consistent with the section 115 method for allocating profits (section 98(5)(a)).
- the section 101 method for allocating chargeable gains or allowable losses (where assets are not matched) must be consistent with both the section 98 method for allocating income, losses and expenses and the section 115 method for allocating profits (section 101(5)(a)).
- the section 115 method for allocating accounting profits before tax (and tax adjustments) must be consistent with the section 98 method for allocating income, losses, and expenses (section 115(4)(a)).
- for an overseas life insurance company, the methods under sections 98, 101 and 115 must also be consistent with the allocation of assets to the permanent establishment.

Consistency does not require an identical approach to be applied across the various methods, but the overall effect of the methods taken together must be fair. As an example, income and gains on unit-linked assets may not contribute to trade profit as there is an offsetting movement in liabilities. However, the income and gains would be included within the I-E calculation.

The allocation of a company’s overall trade profit (or loss) between BLAGAB and other long-term business may result in a trade profit from BLAGAB and a trade loss from other long-term business (or vice versa). However as set out in HMRC’s Life Assurance Manual, LAM05120, this is not the case for commercial allocation of income. Section 98 refers to a method of deciding how much of the credits or other income and the debits or other losses arising from the company’s long-term business are referable to BLAGAB. When allocating a single category of income, loss or expense between BLAGAB and non-BLAGAB under section 98, then the allocation of a specific item should not be capable of resulting in one positive and one negative figure.

Overall, as per LAM05020, a method that is fair will reflect the underlying commercial position, considering the company’s own systems for identifying policyholder returns and measuring the profitability of the products and any other relevant commercial information used by the company.

4.1. I–E allocations

Chapter 4 of the Finance Act 2012 sets out how amounts should be allocated to BLAGAB for the purposes of the I–E calculation.

Allocation of income, losses, and expenses

Income and expenses arising from the company's long-term business should be determined in accordance with an 'acceptable commercial method' which has been adopted by the company for that period. Section 98(3) describes a method as being acceptable 'if, in all circumstances, it can reasonably be regarded as providing a fair method… for determining for a period of account what is referable to the company's BLAGAB.'

What is a fair method will depend on the facts and circumstances of individual companies and is likely to be embedded into the company's policies for tax. Commercial allocations will have been agreed with HMRC upon the transition to the FA 2012 regime, however, if there is a significant change to the apportionment method adopted in a company it is advised to discuss these changes with your CCM. HMRC encourage insurers to engage with them regarding any new methodology, or changes to existing methodologies with a view to agreeing a suitable method before it is used in making a return per LAM05030.

In most cases, it is the allocation of income and gains that requires the most attention as insurers often hold assets that are not separately identified as backing either BLAGAB or non-BLAGAB business.

Allocation of gains and losses on disposal of assets

Assets matched to BLAGAB liabilities

If an asset is wholly or partly matched to a BLAGAB liability immediately before a disposal, the appropriate portion of the gain or loss is referable to BLAGAB.

Section 100(3) describes an appropriate proportion as being 'the proportion equal to the proportion of the asset matched to the BLAGAB liability'.

If there is a transfer of assets between categories of business which results in a disposal/part disposal of an asset (see chapter 3.4.2) where the part concerned is matched to a BLAGAB liability, the whole of the gain or loss is referable to BLAGAB.

Note that the section 100 method for allocating chargeable gains on matched assets is not stated to have to be consistent with anything, but the definition of 'matched' should mean that gains are only directly referable under that section if the income is also directly referable.

Non-matched assets

If the whole of or part of an asset is not matched to a BLAGAB liability, the gain or loss arising on the non- matched part of the asset is allocated to BLAGAB using an acceptable commercial method.

Section 101(3) notes that a method is an acceptable commercial method if it fairly represents the contribution the assets have made to the business during the period in which they have been held for the purposes of the company's long-term business.

Back in the consultation period prior to Finance Act 2012, HMRC noted that they did not expect a company to have to complete an onerous look back exercise over a significant period to determine the contribution an asset had made to the business over its lifetime. But the legislation is not explicit on this point. As a consequence companies will need to engage in discussions with their CCM to determine the practical application of this clause as relevant and following consideration of HMRC's guidance in LAM05100.

4.2. Trading profit computations allocations

Chapter 7 Finance Act 2012 sets out how amounts should be allocated to BLAGAB for the purposes of the trading profits calculation.

The accounting profit or loss, and the tax adjustments are to be allocated between the BLAGAB and non-BLAGAB businesses in accordance with an acceptable commercial method adopted by the company.

Section 115(2) notes that a method is an acceptable commercial method 'if it secures that the accounting profit or loss, and the tax adjustments, are allocated to the two separate businesses in a way that fairly represents the contribution made by those businesses to the accounting profit or loss adjusted to take into account the tax adjustments.'

The method adopted must be consistent with the I-E method adopted for the I–E calculation as above and in the case of an overseas life insurance company must also be consistent with the method for that period for attributing assets to its permanent establishment.

Companies may also wish to apply separate methods for with-profits funds and other business – for example a bonus-based allocation of profit may be suitable for a with-profits fund. An illustrative example of commercial allocation for a with-profits fund is included in the HMRC Life Assurance Manual (LAM05080).

As with the I-E apportionment, it is advised that if there is a significant change to the business or the method of apportionment between BLAGAB and non-BLAGAB since any previous commercial allocation was agreed with HMRC, it should be discussed with the company's CCM.

5. Long-term business fixed capital and other assets

The diagram below represents the division of the assets of a life insurance company:

The long-term business tax rules do not apply to:

- any general insurance business assets – which are broadly taxed on 'normal' trading principles, separate from the long-term business assets;
- assets which are not held for the purposes of the insurance trade (now comparatively unusual in practice, given that arguably insurance policyholders can generally call upon all of the assets of an insurer as required – see further below); and
- assets forming part of the long-term business fixed capital.

Section 122 provides that assets forming part of the long-term business fixed capital are to be treated as held otherwise than for the purposes of the long-term business. These assets are then treated for tax purposes as being held as part of a separate investment (non-trading) business, with the tax rules for investment companies applied to these assets accordingly.

We have summarised below the definition of long term business fixed capital assets used in these rules:

Meaning of long-term business fixed capital

Per section 137, an asset is part of the long-term business fixed capital if:

- it is held for the long-term business; and
- it is a structural asset.

We would typically expect substantially all of the assets of a life insurance company to be regarded as held for the purposes of its long term business, excluding any assets held for general insurance trade in composite insurers. This is HMRC's view in LAM11020 where they state:

'The new life tax regime does not recognise the 'shareholder fund' other than under the transitional rules (FA12/SCH17/PARA35) where assets of what was previously referred to as the shareholder fund were grandfathered into LTBFC (LAM11050). Following the introduction of Solvency II in 2016 the regulatory return no longer has any reference to assets being for other than long-term business. Therefore, all assets of a life company, unless not held for the purpose of the life insurance business (see LAM11070), now support the life insurance trade unless they qualify for the specific LTBFC exception'.

As such, the key limb of this definition is whether assets are treated as 'structural assets'. These are defined in section 137 as including shares, debts and loans which:

- are held outside of a with-profits fund; and
- would (if held at 31 December 2012) have been required to be shown in lines 21 to 24 of Form 13 (UK insurance dependants and other insurance dependants).

The latter rule is intended to mirror the provisions previously included in the 'old' life insurance tax rules that applied prior to 2012, based on the previous PRA regulatory return capital rules. In essence this is intended to capture investments in subsidiaries/associates (including loans to those companies) where the subsidiary/associate carries on activities related to the insurance trade. Whilst the previous PRA regulatory return definition is increasingly less relevant for insurers, we would continue to expect this core principle to apply for these subsidiaries/investments (where held outside of a with-profits fund).

It is open to a company to argue that any asset which does not fall in the above description may be a structural asset on its own facts. In particular, this may be relevant for assets which may previously have been regarded as 'shareholder fund' assets where these are held separately from the insurer's trading assets, or structural debt of an insurer. HMRC set out their view on this point in their manual (LAM11040) as follows:

'Where FA12/S137(3) and FA12/SCH17/PARA35 and 35A do not apply, a company has to form a view of whether an asset is a structural asset. There is no statutory definition. The term is not used anywhere else in the Taxes Acts. But both 'structural' and 'asset' are two normal English words. Whether something is an asset is unlikely to be controversial. But what does it mean to say an asset is a structural asset?'

'HMRC and industry agreed during discussion leading to the new 2012 legislation that first principles should be used to determine whether an asset is structural. This should not be taken to mean that the term structural is synonymous with the distinction between capital and revenue expenditure. Whether or not assets, other than insurance dependants, qualify as structural should be determined using an analysis of the facts in order to establish whether the asset is structural to the business or not. For example, wholly owned subsidiaries and the premises in which the trade is carried on are likely to be structural assets within an insurance business unless they are held in a with-profit fund or are managed in the same way as other long-term insurance trading assets. In the case of assets held in with-profit funds of proprietary companies, which are available to meet policyholder liabilities, the presumption is that they will not be structural assets because they contribute to the benefits enjoyed by the policyholders.'

In practice then, whether a specific asset is a structural asset is a question of fact. Companies wishing to argue a specific asset is structural and therefore treated as LTBFC for tax purposes should retain factual evidence as to the intentions of the company in holding this asset, and how it is managed internally (in particular, where the asset is not an insurance dependent). This can be an area of complexity in agreeing commercial allocation methodologies with HMRC and one in which both the industry and HMRC view may continue to evolve over time.

In addition to the above principles, companies which operate an FFA/UDS may wish to consider whether an asset in respect of which value movements may be taken to the FFA/UDS should be treated as structural. This again will be a question of fact.

Finally, these rules include a regulation-making power for HMRC to specify certain assets as being, or not being, structural assets as the existing definition is not exhaustive – indicative by the use of the word 'including' within section 137. HMRC have not taken up this power to date, typically relying on factual arguments. However, this power remains and HMRC could make regulations in future periods if they consider more clarity is needed.

Transitional provision – Assets in the shareholder fund at 31 Dec 2012

In addition to the above, a specific transitional rule was included at the time the 'new' life tax rules were introduced in 2012 to ensure continuity of treatment for assets previously included within the shareholder fund for tax purposes. This transitional rule only applies to assets that were held at the time of the transition to the new life tax rules on 1 January 2013, but we are aware that many insurers continue to hold relevant assets and so have summarised this rule below.

This transitional rule is in Paragraph 35 of Schedule 17 Finance Act 2012. This rule deems that assets of the Shareholder Fund as at 31 December 2012 are to be treated as forming part of long-term business fixed capital under the rules. The definition of the assets in question is based on the treatment in legacy PRA returns, i.e. non long-term business assets on the 31 December 2012 Form 13 are the assets of the shareholder fund for these purposes (including any assets on lines 11

to 102, even where they may otherwise have been inadmissible). The deeming applies whether or not the assets would not otherwise be so treated in line with the principles discussed above.

However, if the income, gain, loss etc of an asset had ever been brought into either the I – E or trading profit computations in a previous period then the asset is not to be included in the definition of shareholder fund assets for these purposes. This should ensure this transitional rule captures only assets treated as shareholder fund assets for tax purposes prior to 2013.

Additionally, this rule only applies to the specific assets held at the transitional date. If the assets are subsequently sold with new assets acquired from the proceeds, the future treatment of the new assets will need to be determined by reference to their own facts under first principles. Given the narrower definition discussed above, the new asset may well then cease to be treated as being part of the long-term business fixed capital for tax purposes, even though economically this may represent assets derived from the same capital.

Tax treatment of long term business fixed capital assets

Where assets are treated as long term business fixed capital under the above rules, they should be treated for tax purposes as being part of an investment business separate to the long term business trade.

The assets will then be taxed in line with general investment company tax principles, which includes applying the loan relationship rules for relevant debt assets and liabilities, the dividend exemption where this applies and also computing chargeable gains on the disposal of capital assets. The substantial shareholding exemption may apply to exempt gains and losses on the disposal of shares treated as long term business fixed capital where the conditions are met, which should be assessed on a case by case basis.

6. Topics

The following chapters discuss various aspects of the new rules – in some cases providing further details to areas previously covered in the discussion of the computational provisions, in others introducing further areas for consideration.

6.1. Transfers of business

6.1.1. Introduction

The rules applying to transfers of long-term life insurance business occurring on or after 1 January 2013 are in Chapter 10 Part 2 FA 2012 and are primarily contained in sections 128 to 135 as well as leveraging various other parts of the legislation.

The key features are:

- principles based rules;
- tax attributes should transfer with the business;
- use of the amounts in the GAAP financial statements;
- a clear distinction between group transfers of business and non-group/third party transfers of business;
- separate rules for Overseas Life Insurance Companies ('OLICs');
- an anti-avoidance rule which applies to tax-motivated advantages (including both trade profit and I–E advantages) as a result of the whole or part of the transfer scheme arrangements.

6.1.2. Preservation of tax attributes

Under the rules, the following tax attributes transfer across to a transferee upon a transfer of life insurance business dependent on whether the transfer is intra-group or not as indicated:

Attribute	Statutory reference	High-level summary
Excess BLAGAB expenses (XSE)	Section 128 FA 2012	Relief should continue to be available in the transferee. The transferee's relief in the transfer year is based on a time apportioned amount starting from the date immediately after the transfer.
Spread deferred acquisition expenses (DAE)	Section 128 FA 2012	As for XSE above, in line with section 128(4), acquisition expenses relief on brought forward 1/7th spread balances transferred are calculated in the year of the transfer based on a time apportioned amount starting from the date immediately after the transfer. The rules are however less prescriptive on the precise amount brought into account for the year of transfer than per the unit trust deemed disposal rules for gains discussed below. So groups typically apply the transfer in a manner that ensures the same amounts get brought into account in the year of transfer in total as would have been the case absent the transfer.
Spread deemed disposal gains/losses	Section 213(4A) to (8) TCGA 1992	Any chargeable gain/loss that would have accrued to the transferor after the transfer shall be deemed to accrue to the transferee (assuming transferee is UK tax resident and will continue to carry on the business transferred). Care must be taken to calculate the appropriate gains/losses attributable to the transferor and transferee in the year of the transfer. See the section below for more details.
BLAGAB allowable capital losses	Section 211ZA TCGA 1992	The unused BLAGAB allowable losses of the transferor at the date of transfer are treated as accruing to the transferee and are deductible against chargeable gains accruing after the transfer. Any section 210A ring-fencing of losses would continue.

Chargeable assets at no gain/no loss	Section 211 TCGA 1992	For long-term insurance business transfer schemes, the transfer is deemed for the purposes of corporation tax on chargeable gains to be for such consideration that there is no gain or loss. Section 211 only applies to assets held for the purposes of long-term business. Assets held not for the purposes of long-term business (such as LTBFC) are therefore excluded. These assets will only transfer on a no gain/no loss basis where s171 TCGA 1992 applies. Whether, for example, goodwill is a long-term fund asset or not may vary from company to company. Assets falling under the section 212 deemed disposal rules do not fall under this section. Equally assets where there is a 'box transfer' between different categories of business as per section 118 do not fall under this section.
Capital allowances	Section 560 CAA 2001	Allowances and charges that would have arisen for the transferor arise for the transferee instead. The sale/transfer of assets to the transferee by the transferor is not treated as giving rise to any allowance or charge. The effect of this is that the transferee takes on the capital allowances position after the transfer and then continues with any allowances/charges as if it was the original owner, and the transfer itself is tax neutral. Care should however be taken with any overseas/non-UK transfers.
Continuity of loan relationship provisions	Section 337 CTA 2009	For a transfer of loan relationships under an insurance business transfer scheme between two companies carrying on long-term insurance business (or under a qualifying overseas transfer), s340 and s341 CTA 2009 can apply. For loan relationships accounted for at amortised cost (for example those that are 'connected company loans'), the transferor is treated as having entered into the transaction for consideration equal to the 'notional carrying value'. The transferee is also treated as having acquired the asset or liability for consideration equal to the 'notional carrying value'. For loan relationships accounted for under fair value accounting, the loan relationships should transfer across at the fair value at transfer date in a similar manner. Care should be taken to consider whether any loan relationship assets move between 'tax boxes' and from one 'applicable category' to another per section 118 as otherwise section 337 would then not apply, or if discounts arise on the transaction.
Continuity of derivatives provisions	Section 625 CTA 2009	Similar to loan relationships, derivatives transferred within a group are treated as being transferred at their 'notional carrying value'. For derivatives accounted for under fair value accounting, fair value is used instead (section 628).
Continuity of intangibles provisions	Section 775-776 CTA 2009	A transfer of post 1 April 2002 intangible fixed assets between companies that are members of the same group should be tax neutral, if the asset is a chargeable intangible asset both before and after the transfer. Section 776 sets out how the tax neutral transfer rule applies.
BLAGAB trade losses	Section 944-994A CTA 2010	Under a long-term insurance business transfer scheme, the transfer of BLAGAB and non-BLAGAB trade losses is expected to be made under the general tax rules on the transfer of businesses within a tax group section 944-944A CTA 2010. The HMRC manual at LAM13040 explicitly states that the transfer of BLAGAB and non-BLAGAB trade losses carried forward is permitted by these two sections notwithstanding any legislative uncertainty on this. Section 944 provides that relief under section 45 CTA 2010 for unused pre 1-April 2017 trading losses against subsequent trade profits is given to the successor in relation to a loss, if relief would have been given under that section to the predecessor had
Non-BLAGAB trade losses		

		continued to carry on that trade. Although relief for BLAGAB trade losses is obtained under section 124 FA 2012 rather than section 45 CTA 2010, our expectation is that the BLAGAB trade losses would nonetheless transfer under section 944.
Transitional differences into the FA 2012 regime	Schedule 17(13) FA 2012	The transitional provisions in Schedule 17(13) FA 2012 covers transfers of business which occur within the 10 year spreading period for deemed receipts and expenses. It sets out that where there is a relevant intra-group transfer of BLAGAB or non-BLAGAB long-term business, any transitional deemed receipts or expenses remaining on or after the transfer date are treated as arising to the transferee and spread over the remainder of the 10 year period in the same way as they would have applied to the transferor. Post 2021, there should be few transitional balances left subject to this transitional rule.
LTBFC assets	Para 35A of Schedule 17	We would expect any pre-2012 'structural assets' to remain as LTBFC in the transferee. For assets classed as LTBFC due to the old shareholder fund provision, para 35A of Schedule 17 provides that the classification remains as such upon a relevant intra-group transfer of all BLAGAB and non-BLAGAB business.
PHT Deferred Tax deduction	Section 107/8 FA 2012	In the BLAGAB trade profit calculations, a deduction is available under section 107 and section 108 FA 2012 for an amount equal to the closing deferred policyholder tax balance for the period of account less the closing deferred policyholder tax balance for the previous period of account. The deferred policyholder tax balances will effectively transfer across and the amount brought into account in the BLAGAB trade profit calculation should represent the movement between the closing deferred policyholder tax balance of the previous period versus the closing deferred policyholder tax balance immediately prior to the transfer, rather than the £nil balance immediately after the transfer. This is so that in line with the principle in s107(4) FA 2012, the amount is only brought into account if debited or credited in the accounts of the company for that period of account.

Particular points to note

As alluded to in the table above, where there is a transfer of an asset between 'tax boxes' on a transfer between transferor and transferee, a deemed disposal of that asset at market value is triggered in the transferor per section 118 (provided neither the transferor nor transferee is charged to tax under section 35 of CTA 2009 in respect of the whole long-term business). See also chapter 3.4.2.

For transfers of only part of a company's insurance business, care needs to be taken to calculate the appropriate amounts to transfer.

When carrying out any life insurance business transfer, companies should consider the appropriate legislation for each asset, liability, and tax attribute in turn to confirm the impact for the particular facts and circumstances. Transfers involving overseas companies can for example cause some complexities.

Section 212 deemed disposal transfers

As noted above, the balance of section 212 deemed disposal gains/losses being spread effectively transfers across to the transferee and the chargeable gains/losses that would have accrued to the transferor, are subsequently deemed to accrue to the transferee per section 213(4A) to (8) TCGA 1992.

The wording of the legislation applied in this regard is mechanical and there are some particular aspects to take note of:

1. The transfer date is deemed to be the end of an accounting period for calculating the deemed disposal gains/losses in the transferor company (section 213(5ZA)). This means that the market value of the relevant investments needs to

be calculated as at the transfer date, which might of course not be a usual date to market value the assets. A full 1/7th of that new gain/loss then unwinds in the tax computation of the transferor company (section 213(1)(b)).

2. Under section 213(2) the 1/7th spreading of the relevant historical spread gains/losses in the transferor should be time apportioned to reflect the shorter accounting period in the transferor.
3. The transferee brings the balances into their tax computation for the accounting period covering the transfer. A time apportioned 1/7th of the gains/losses brought in from the transferor would then unwind in the transferee's tax computation. This means that there is an acceleration of the unwind of gains calculated in point 1 above as, although a full 1/7th has already unwound in the transferor, an additional time-apportioned 1/7th unwinds in the transferee. This is a peculiarity of the mechanical rules causing a timing impact; however the total unwind over time would still be capped to the extent of the original gain/loss. This acceleration can however cause an impact to cash flow and so where significant deemed disposal gains/losses are expected in the year of the transfer, companies may wish to consider this early.
4. The new chargeable gain/loss arising to the transferee on the transferred assets is calculated on the basis of an accounting period starting from the date immediately after the transfer up to the end of the transferee's accounting period. This amount is then subject to a full 1/7th unwind in the year (section 213(6)).

To illustrate the impact of this, we have summarised in the following two tables some example numbers. For these purposes, we assume that the transferring business earns gains of £1.75m per quarter (so £7m annually). The transfer is assumed to happen at the end of Q3 which is 30 September 2022. We have assumed for the simplicity of the illustration that the whole of the business transfers and so there are no other section 212 gains in the transferor company. The time apportionment has been calculated for simplicity on a monthly basis, however in reality should be calculated on a daily basis for accuracy. We have also ignored any other section 212 investments that the transferee may already hold as they would need to be dealt with separately.

The gains brought into account for the transferred investments in the transferor and transferee in the year of the transfer would then be as follows:

Illustration 1 – Deemed disposal gains spreading in the transferor company

Period end	Deemed disposal (£'000)	Taxable prior years (£'000)	Taxable this period (£'000)	Untaxed c/f (£'000)	Untaxed b/f (£'000)
31 Dec 2016	7,000	6,000	750[1]	250	1,000
31 Dec 2017	7,000	5,000	750[1]	1,250	2,000
31 Dec 2018	7,000	4,000	750[1]	2,250	3,000
31 Dec 2019	7,000	3,000	750[1]	3,250	4,000
31 Dec 2020	7,000	2,000	750[1]	4,250	5,000
31 Dec 2021	7,000	1,000	750[1]	5,250	6,000
30 Sep 2022	5,250[2]	0	750[2]	4,500	0
Total	**47,250**	**21,000**	**5,250**	**21,000**	**21,000**

[1] 1/7th unwind is time apportioned to be 9/12ths of the spread gains of £1m p.a (based on transfer date 30 September 2022)

[2] Gain is calculated based on 1 January up to the transfer date, and a full 1/7th unwind taken in the short period.

Illustration 1 – Subsequent spreading of the transferred gains within the transferee company

Period end	Deemed disposal (£'000)	Taxable prior years (£'000)	Taxable this period (£'000)	Untaxed c/f (£'000)	Untaxed b/f (£'000)
31 Dec 2016	7,000	6,750	250[1]	0	250
31 Dec 2017	7,000	5,750	250[1]	1,000	1,250
31 Dec 2018	7,000	4,750	250[1]	2,000	2,250
31 Dec 2019	7,000	3,750	250[1]	3,000	3,250
31 Dec 2020	7,000	2,750	250[1]	4,000	4,250
31 Dec 2021	7,000	1,750	250[1]	5,000	5,250

30 Sep 2022	5,250[2]	750	188[2]	4,312	4,500
31 Dec 2022	1,750	0	250[3]	1,500	0
	49,000	**26,250**	**5,438**	**20,812**	**21,000**

[1] 1/7th unwind in the transferee's computation is time apportioned to be 3/12ths of the spread gains of £1m p.a (based on the day after transfer up to 31 December). Unwind would always be capped so that the cumulative gains/losses unwound over the years do not exceed the original gain/loss.

[2] As above, this is a time apportioned seventh (i.e. 3/12ths of 1/7th of the gain). Given a full 1/7th has already been unwound in the transferor computation, this £188k unwind is effectively the amount that is 'accelerated' or 'double counted' in the year.

[3] Gain is calculated based on the day after the transfer up to the end of the transferee's accounting period, and a full 1/7th unwind taken in the transferee's computation (section 213(6)).

This means an acceleration of the gains being brought into account per this example of £188k. This is caused by the effective 'double unwind' in the year of 3/12ths of the seven year unwind of the gains arising in the short pre-transfer period. This should solely be a timing difference though as the rules include a mechanism to limit the taxation across the years to the extent of the original gain.

6.1.3. Intra-group transfers

Section 129 FA 2012 sets out the rules for BLAGAB trade profits purposes in respect of intra-group transfers. The rules allow the transferee to effectively 'stand in the shoes' of the transferor.

Where the provisions of section 129 FA 2012 are met, the transfer should generally be tax neutral i.e. no gain or loss is brought into account on the transfer itself. Specifically, any accounting gain or loss recognised on the transfer of this business is excluded from tax under this relief, with amounts only brought into tax if there is a difference in the net amounts recognised in respect of the long-term business before and after transfer.

Typically, this would be due to any differences in reserving, but this could also be triggered by any valuation differences so should be confirmed with accounting colleagues. The provisions also override the transfer pricing rules in Part 4 TIOPA 2010 which would typically require tax returns to be prepared as if intragroup transactions were priced on arm's length terms.

For a transfer to be intra-group, the transferor and transferee must be members of the same group when the transfer occurs and the transferee must be within the charge to corporation tax in relation to the transfer. Therefore, there needs to be careful consideration of the rules in relation to intra-group cross–border transfers where the transferor is within the charge to corporation tax, but the transferee is not.

What constitutes a 'group' of companies and when two (or more) companies are members of the same group is defined in section 135 in the same way as a capital gains group (as in section 170 of TCGA 1992).

Section 129 also sets out the rules for BLAGAB trade profits purposes in respect of transfers in connection with a demutualisation. A transfer is in connection with a demutualisation if:

- it is for the purposes of the conversion of a company (under the law of any territory) from one without share capital to one with share capital (without any change of legal personality), or
- it is a transfer by a mutual life insurance company of all, or substantially all, of its basic life assurance and general annuity business to an insurance company which is not a mutual life insurance company.

However, section 129 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' (section 129(10)). These are any transfers from a with-profits fund to a fund that is not a with-profits fund (or vice versa). The legislative wording is such that if a transfer comprises only partially of a with-profits fund transfer, it is only the related amounts that are precluded from section 129 rather than the total amount arising from the transfer. If part of the transaction is caught by section 129(10), then we consider that only that part of the transfer should be excluded from section 129 i.e. this should not 'taint' the whole of the transfer. We consider this should follow from the 'amounts arising' wording in section 129(10). This is also consistent with HMRC guidance at LAM13060.

For intra-group transfers or transfers which are in connection with a demutualisation as set out above (and not a with-profits fund transfer):

- in the transferor, any amounts that are debited or credited in the GAAP accounts in respect of the transfer are ignored for the purpose of calculating the BLAGAB trade profit or loss;

- similarly, in the transferee, any amounts that are debited or credited in the GAAP accounts in respect of the transfer are also ignored for the purpose of calculating the BLAGAB trade profit or loss; and
- if there is a difference between the net amount (assets less liabilities) recognised by the transferee in respect of the transfer (regarding contracts of long-term insurance or contracts made in the course of capital redemption business) and the amount recognised in the transferor in respect of the transfer, the difference is brought into account in the BLAGAB trade profits computation of the transferee (as either a receipt or an expense) in the accounting period of the transfer. This may typically arise from differences in reserving. (Section 129(6)-(8)).

The calculation of the difference in valuation between transferee and transferor is by reference to the balance sheet values of the 'relevant' assets and liabilities relating to the contracts:

- immediately before the transfer for the transferor; and
- immediately after the transfer for the transferee.

'Relevant' assets and liabilities means those which give rise to amounts that are taken into account as part of the calculation under Chapter 6 of Part 2 FA 2012. Per LAM13060, the relevant liabilities and assets are the liabilities and assets of the insurance business transferred whose values impact upon the trading profit. An amendment to section 129(8) clarified this position for transfers on or after 31 December 2015, making it clear that only those liabilities and assets which give rise to profits or losses within the trade calculation rules are compared. As the net amount involves subtracting the liabilities from the assets it is capable of being a negative amount where the transferred liabilities exceed the assets.

Section 139(2) states that any reference to the debiting or crediting of an amount in accounts drawn up by an insurance company is a reference to bringing in the amount as a debit or credit in –

- the company's profit and loss account, income statement or statement of comprehensive income (or other comprehensive income),
- a statement of total recognised gains and losses, or
- any other statement of items used in calculating the company's income or gains, or its losses or expenses, for accounting purposes, irrespective of how any account or statement is described or otherwise referred to.

Section 131 FA 2012 sets out that the rules in section 129 apply in the same way for non-BLAGAB trade profits in respect of intra-group transfers and transfers in connection with a demutualisation.

If a transfer is deemed to be excluded by s129(10), it should fall into s130 which applies when:

'(b) either the transferor and transferee are not members of the same group of companies when the transfer occurs or, if they are, the transfer consists of or includes a with-profits fund transfer within the meaning of section 129(10)'

The effect of section 130 FA 2012 applying to a transfer is that the amounts in respect of the with-profit fund transfer that are debited or credited in accounts drawn up by the transferee are to be taken into account in calculating the trade profit or loss of the transferee. This contrasts to the position under section 129 where these amounts would generally be ignored in both transferee and transferor.

If a single transfer Scheme covers with-profits transfers and non-profit transfers, or BLAGAB and non- BLAGAB, or any combination of such, it should be broken down into its separate elements and sections 129, 130 and 131 applied (as relevant) to each.

Example

Transferor and Transferee are both UK life insurance companies and are wholly owned subsidiaries of Parent Co. On 31 December 2021, Transferor transfers assets of £1,000m and liabilities of £950m related to BLAGAB from its non-profit fund to Transferee's non-profit fund under an insurance business transfer scheme. However, Transferee recognises liabilities of £975m on transfer.

Transferor: Loss of £50m (£950m of liabilities less £1,000m of assets)

Transferee: Profit of £25m (£1,000m of assets less £975m of liabilities)

The transfer is an intra-group transfer.

For the purposes of the BLAGAB trade profits calculation, Transferor would ignore (disallow) the £50m loss arising on transfer. Transferee would ignore (exempt) the profit of £25m arising on transfer.

However, the net amount recognised between Transferor and Transferee is not nil (£25m is different to £50m). As a result, there is an adjustment of £25m loss (being the difference) in the BLAGAB trade profit calculation of Transferee. The loss is treated as an additional expense.

6.1.4. Third party transfers

There are no specific rules for the treatment of amounts recognised on transfer in the transferee or transferor in non-group or third party transfers (other than the section 130 rule referenced below). Therefore, under first principles, any amounts in the GAAP accounts are taxable or allowable subject to any statutory provision to the contrary (for example, capital versus revenue). It should also be noted that the same principles apply to intra-group with-profits fund transfers which are specifically excluded from the intra-group transfer rules in section 129.

For a transfer to be non-group/third party, the transferor and transferee cannot be members of the same group when the transfer occurs (as defined in section 135).

The specific rule in section 130 applies to non-group/third party transfers (and transfers consisting of or including a with-profits fund transfer) where the transferee has an asset that represents, as at the time of the transfer, the value of future profits arising from the relevant business (or part of the business) transferred, and the asset is not one to which Part 8 of CTA 2009 (intangible fixed assets) applies (for example PVIF).

Where there is such an amount, any amounts in respect of the asset that are debited or credited in accounts drawn up by the transferee in accordance with generally accepted accounting practice are to be taken into account in calculating the BLAGAB trade profit or loss of the transferee.

However, no account can be taken of such an asset if it is internally generated for accounting purposes.

Note that section 139 states that any reference to the debiting or crediting of an amount in accounts drawn up by an insurance company is a reference to bringing in the amount as a debit or credit in—

- the company's profit and loss account, income statement or statement of comprehensive income (or other comprehensive income),
- a statement of total recognised gains and losses, or
- any other statement of items used in calculating the company's income or gains, or its losses or expenses, for accounting purposes, irrespective of how any account or statement is described or otherwise referred to.

Section 131 sets out that the rules in section 130 apply in the same way for non-BLAGAB long-term business in respect of non-group/third party (or with-profits) transfers.

Example

Transferor and Transferee are both UK life insurance companies, but are not part of the same group. On 31 December 2021, Transferor transfers assets of £1,000m and liabilities of £950m related to BLAGAB from its non-profit fund to Transferee's non-profit fund under an insurance business transfer scheme. However, Transferee recognises liabilities of £975m on transfer.

Transferor: Loss of £50m (£950m of liabilities less £1,000m of assets) Transferee: Profit of £25m (£1,000m of assets less £975m of liabilities)

The transfer is not an intra-group transfer. For the purposes of the BLAGAB trade profits calculation, Transferor would allow the £50m loss arising on transfer. Transferee would tax the profit of £25m profit arising on transfer.

6.1.5. Anti-avoidance rule

Section 132 contains the transfer of business anti-avoidance rule.

The rule applies if under an 'insurance business transfer scheme' there is a transfer on or after 1 January 2013 of BLAGAB or non-BLAGAB long-term business and the main purpose, or one of the main purposes of the 'insurance business transfer scheme arrangements', is an 'unallowable purpose'.

The 'insurance business transfer scheme arrangements' includes the transfer under the Scheme and any arrangement (agreement, scheme, transaction or understanding) with a connection (direct or indirect) to that scheme.

There is an 'unallowable purpose' if it:

- consists of securing a corporation tax advantage (section 1139 of CTA 2010) for the transferee, transferor or any other company; or
- it is not amongst the transferee's, the transferor's or any other company's business or other commercial purpose.

Note that compared to the historic pre-2013 rules, the present anti-avoidance rule covers any corporation tax advantage and not just a trade profit advantage.

Where the anti-avoidance rule applies, there is to be made such adjustments of any income or gains chargeable to corporation tax as are required to negate any tax advantage arising so far as referable to the unallowable purpose on a just and reasonable apportionment basis.

Anti-avoidance clearance

Statutory clearance can be obtained that the anti-avoidance rule of section 132 above does not apply, provided that the HMRC Commissioners are satisfied that:

- the main purpose, or one of the main purposes, of entering into the transfer arrangements is not an 'unallowable purpose'; or
- the transferor and transferee are members of the same group when the transfer occurs, and the transfer produces no tax advantage for the group (i.e., it is at least tax neutral across transferee and transferor).

A clearance application under section 133 must be made in writing and contain particulars about the insurance business transfer arrangements (section 134).

Further information may be requested by HMRC (by notice) once the clearance application has been submitted. This may be imposed within 30 days of receipt of the application by HMRC. If this notice is not complied with within 30 days (or a longer period as the HMRC Commissioners allow) then HMRC do not need to consider the application.

HMRC must give notice of their decision within 30 days of the application being received or within 30 days of the notice for further information being complied with.

Note that if the information provided to HMRC does not fully and accurately disclose all facts and considerations that are material for the decision of HMRC, then the notice HMRC deliver under section 133 is voided.

6.1.6. Tax treatment of consideration paid for the business transfer- I-E considerations

A relevant additional consideration on a transfer of long-term insurance business is the possible I-E tax treatment of the consideration received on transfer. Often a transferee company will receive consideration in return for the transfer of their insurance business.

Section 92 Finance Act 2012 provides for the taxation of certain BLAGAB trading receipts that otherwise do not come into the charge to corporation tax through the I-E regime by way of being deemed I-E receipts. Specifically, section 92 applies where the following conditions are met:

1. An insurance company has receipts that are taken into account in calculating its BLAGAB trade profit or loss for an accounting period;
2. The receipts would not fall within the charge to corporation tax under the I-E regime apart from [s92]; and
3. The receipts are not 'excluded receipts'.

Considering the first condition, a literal reading of the legislation could indicate that consideration paid for the transfer of net assets and liabilities is a 'receipt' in the transferee company for these purposes. However, where relief is obtained under section 129 for an intra-group transfer (see above), we consider that section 92 should not then apply. For third party long-term business transfers, it is less clear that any mitigating provisions exist and the possible argument that HMRC could make on the application of section 92 may then depend upon the precise wording of the legal agreements (in particular, how the consideration is described in the documents).

6.1.7. Preparing for a transfer of business

If a transfer is being undertaken for commercial reasons and no tax advantage is being sought, then the transfer of business rules are intended to give a reasonable tax result. However, the legislation is complex, principles based and application has been seen in recent discussions with HMRC to be very fact specific and so the exercise of going through each of the provisions and checking their applicability carefully must be undertaken for each proposed transaction.

The first stage in a tax analysis of a life transfer of business should be to determine which entities are involved. UK life assurance companies, overseas life insurance companies and friendly societies all have different rules applying to them

and of course, there is a possibility that a party to a transaction may not fall within any of those descriptions. Identifying the types of entity involved is crucial – as only then can you identify which particular version of the law to refer to.

The second stage is to determine whether there are one or more insurance business transfer schemes. This is important as many of the tax rules only apply if the transfer is via an insurance business transfer scheme.

The third stage is to determine whether the transfer is an intra-group transfer, in connection with a demutualisation or a non-group/third party transfer. Once this is done, you can then proceed to understand how the transaction will be taxed.

When considering how the transaction will be taxed, there are two key areas which will require some thought:

- accounting for the transfer – this will determine where profits or losses which arise on the transfer (or are ignored for intra-group transfers) are taxed and the timing of tax (for example, a deduction for amortisation of PVIF versus an upfront loss)
- application of the anti-avoidance rule – the wide scope so that it covers corporation tax advantages (including I-E tax advantages) as a whole (rather than just trading profit advantages) means that groups should engage early with HMRC to ensure that certainty can be achieved in relation to the applicability of the anti-avoidance rule (which will be particularly important upon M&A transactions).

6.2. Loss relief

Introduction

The life insurance tax rules contain specific provisions that provide relief for tax losses. In line with the position for other companies, these rules were extensively amended with effect from 1 April 2017 (Schedule 4 Finance Act (No. 2) 2017).

These changes introduced a new restriction on the use of brought forward tax losses (the '50% rule') in Part 7ZA CTA 2010 and additional flexibility on the use of post April 2017 losses within groups in Part 5A CTA 2010. There are specific provisions for life insurers on the application of these rules, in particular for BLAGAB business (which were again subsequently amended with effect from July 2018).

This section of the handbook summarises these specific rules for life insurers. This includes:

- a summary of the various relieving provisions for different categories of tax losses in a life insurance groups;
- the specific restrictions on the use of tax losses that apply for the different categories of long term insurance business, on both pre April 2017 ('old') and post April 2017 ('new') tax losses;
- the specific provisions and restrictions on group relief claims and surrenders in life insurance groups; and
- a brief discussion on the specific provisions for 'shock losses' for insurance groups, which are primarily of importance in Solvency II reporting.

This chapter primarily focuses on revenue tax losses (i.e. trade losses, non-trade debits (NTDs) and excess BLAGAB management expenses (XSE) etc), but we have also briefly commented on capital losses in this chapter, including the changes to these rules from April 2020.

Use of tax losses

In general, the various provisions on the use of tax losses in other businesses will also apply to life insurance companies. In particular, these rules typically apply without modification to non-BLAGAB and LTBFC businesses within life insurance companies. As a consequence, non-BLAGAB trading losses in a life insurance company are subject to the same carry-back, carry forward and group relief provisions as in any other company, including the rules in respect of the 50% restriction (see below). We have not summarised these rules in full below, but note they are set out in Chapter 15 of HMRC's Life Assurance Manual (see the table in LAM15000 for an overview of the various reliefs that may be relevant).

There are then a series of specific rules that deal with loss reliefs in respect of BLAGAB business, both in respect of losses from this business and offsets of other tax losses (both in company and group relief) against BLAGAB profits. We have summarised these specific rules in the table below:

Type of loss	Loss offset rule
Non-trading loan relationship (or derivative contracts) deficits ('NTDs')	There are specific rules on the use of these losses, which are described in chapter 6.4. In brief, these should be offset against BLAGAB 'I' (before XSE) and if surplus, may be carried back against loan relationship profits in the prior year or carried forward as XSE.
Excess BLAGAB management expenses ('XSE')	These should be offset against BLAGAB income (after NTDs) to the fullest extent possible, and then carried forward to be offset against future BLAGAB 'I'. The 50% restriction does not apply to these losses. (Section 73 FA 2012 which gives relief for brought forward 'E' was not amended as part of the 2017 changes, and Part 7ZA CTA 2010 does not apply to BLAGAB management expenses). (See further in chapter 3.3.2).
BLAGAB intangible fixed assets debits	Any excess of debits over credits is carried forward as XSE per the 'step 3' adjustment in section 78(3). (See further in chapter 3.3.2 and chapter 6.5).
BLAGAB property business losses	Any surplus property losses are treated as a deemed management expense (XSE) of the period and treated accordingly. (See further in chapter 3.3.3).
BLAGAB capital allowances	A distinction is drawn between capital allowances on management assets (treated as XSE per the 'step 3' adjustment in section 78(3)) and allowances on investment assets. The latter should only in reality be offset against any property business income in BLAGAB 'I' to give the net result for the BLAGAB property business.

BLAGAB capital losses	These should be offset against BLAGAB chargeable gains of the period, or carried forward to offset against future BLAGAB gains. The 50% restriction on capital losses (see below) does not apply to the offset of brought forward BLAGAB losses. The 'shareholder share' of any losses may be surrendered to be offset against gains outside of the BLAGAB 'ring fence' under section 210A TCGA 1992, noting these rules are complex. (See further in chapter 3.4.1)
BLAGAB unit trust deemed disposal losses (UTDD)	These should by default be aggregated with other BLAGAB capital losses of the company (see above). However, these losses may also be carried back for two years under section 213 TCGA 1992, to offset against UTDD gains in those periods on a last in first out (LIFO) basis.
BLAGAB trade losses	The default is that these losses are carried forward to be offset against future BLAGAB trade profits (and in practice, this is by far the most common approach). In principle, a claim may be made to offset these losses against the 'shareholder share' of total profits of the company in the current year and/or prior year (section 123 FA 2012) or to surrender these losses as group relief (section 125 FA 2012), after reducing these losses for any NTDs in the period (section 126 FA 2012). If these claims are made, BLAGAB management expenses must be reduced accordingly, which means these claims are rare in practice (but we note may be more common again once the CT rate increases to 25% (post 1 April 2023 as of date of publication)). Finally, there are specific rules on the application of the 50% restriction to these losses – see below.
Reliefs against BLAGAB profits	Subject to the general rules on loss reliefs, other tax losses in the company (especially non-BLAGAB trade losses) or losses from other group companies via group relief may be offset against the 'shareholder share' of BLAGAB I-E profits. However no reliefs may be claimed from outside the BLAGAB ring-fence to reduce the policyholder share of these profits (section 127 FA 2012).

New loss relief rules

50% restriction

In general, from April 2017 onwards brought forward revenue tax losses of a company (i.e. losses other than capital losses) may only be offset against 50% of taxable profits in each following year. This applies to both 'old' and 'new' tax losses brought forward in a company. This restriction is subject to an annual £5m allowance on a group wide basis i.e. a group is entitled to offset £5m of brought forward losses against current year taxable profits each year without restriction, with the 50% applied thereafter.

As noted above, these rules do not apply to all categories of brought forward tax losses in a life insurance company. This restriction is relevant for non-BLAGAB and LTBFC losses but most importantly for life insurers, the rules do not apply to the offset of brought forward XSE against BLAGAB income.

Initially, these restrictions did apply to the offset of brought forward BLAGAB trade losses, with specific provisions in section 124D FA 2012 introduced to apply this restriction to these losses. However, with effect from July 2018 this provision was withdrawn and the '50% restriction' does not generally apply to the offset of brought forward BLAGAB trade losses either after that date.

Finally, with effect from April 2020 these rules were effectively extended to apply to the offset of capital losses. Again, these restrictions do not apply to the offset of BLAGAB capital losses against future BLAGAB gains. These rules may though be relevant to life insurers in respect of section 210A TCGA 1992 claims and offset of other capital losses in the company (e.g. LTBFC capital losses).

Relaxation affecting use of post-April 2017 losses

Alongside introducing the above restriction, the loss reforms in April 2017 allowed additional flexibility on the offset of 'new' tax losses within a group of companies. In effect, the new rules allowed companies to offset 'new' brought forward losses against the current year taxable profits of any group company subject to the 50% restriction. The existing offset rules for 'old' losses remained i.e. brought forward 'old' losses for pre-2017 periods can still only be offset against future profits of the same company and category.

These rules on additional flexibility are relevant to life insurance companies, in particular in respect of non-BLAGAB and LTBFC profits/losses. Any additional loss offsets against BLAGAB I-E profits will be subject to the same rules as noted

above (i.e. only against shareholder profits) and the surrender of 'new' BLAGAB losses under these rules will be subject to the same restrictions as noted above.

Group relief

Subject to the specific rules outlined above on set off, shareholder tax losses in a life insurer can also be surrendered to other group companies by way of group relief. This includes BLAGAB trade losses, but excludes any BLAGAB policyholder attributes (BLAGAB XSE, NTDs, IFA debits, capital allowances and property business losses etc) which can only be offset against I-E profits in the life insurer.

Whilst BLAGAB trade losses can in principle be surrendered as group relief (subject to the section 126 FA 2012 restriction discussed above), a life insurer must reduce BLAGAB expenses by the amount surrendered (in effect ensuring the company only receives 'marginal rate relief' for these losses) so this is rare in practice. The surrender of these losses is also subject to the profit related threshold (section 105 CTA 2010) which includes specific rules for determining the amounts that may be surrendered from a life insurer.

A life insurer may also claim relief for losses from other group companies as group relief. In general, these amounts can only be claimed against the 'shareholder share' of taxable profits i.e. I-E profits that would otherwise be taxed at the corporate tax rate, and any non-BLAGAB and/or LTBFC taxable profits.

Shock losses

The loss reform rules contain special provisions in s269ZJ-s269ZO CTA 2010 to allow the loss restriction rules described above to be 'switched off' by election where an insurer suffers a 'shock event' (broadly defined by reference to Solvency II regulations as below). The shock loss election was introduced by HMRC to ensure that the loss restriction rules do not act as a barrier to insurers recovering as quickly as possible post a stress event, and are therefore of primary importance in calculating tax balances (especially the Loss Absorbing Capacity of Deferred Tax – 'LACDT') in Solvency II reporting.

In general, these rules are 'triggered' where an insurer suffers a tax loss in any given accounting period that is at least equal to 90% of its Solvency Capital Requirement ('SCR') as defined under the Solvency II regulations. There are then complex provisions to ensure these rules remain effective for with-profit funds and other categories of business in a life insurance company.

Where these rules apply (hopefully rarely in practice!), insurers should make an election to HMRC signed by a qualified actuary certifying that the above conditions are met. The relevant shock losses as defined under these rules may then be carried forward and used without restriction against future taxable profits of the same company and type (the shock loss also switches off the ability to group relieve these losses, so careful consideration would be required as to whether the election would be beneficial).

Given the loss restriction rules do not typically apply to BLAGAB losses (see above), this election is of primary importance to non-BLAGAB losses and in particular in calculating the LACDT in Solvency II reporting in respect of this business. LACDT is in effect the deferred tax asset which an insurer would expect to recognise if the 1 in 200 year stress events modelled under Solvency II crystallised, which then reduces the SCR or amount of capital an insurer is required to hold against the risks of these events.

Companies will commonly anticipate making this election in computing LACDT. However, in order to support this approach evidence will be needed (for internal governance, auditors and regulators as appropriate) that the company would both meet the relevant conditions to make this election (i.e. the 90% test would apply as above) and that the company would choose to make the election given the loss of the ability to group relieve these losses.

6.3. Taxation of reinsured business

Background

The taxation of reinsured business depends both on the type of reinsurance arrangement and on the types of business being reinsured.

Taxation of reinsured non-BLAGAB business is relatively straightforward i.e. the impact of reinsurance should be taxed on the trading account of the cedant and reinsurer.

However, where BLAGAB business is reinsured, taxing the impact of reinsurance on the trading account of the reinsurer would mean that the investment return accruing for the benefit of policyholders would be matched by the reinsurer's liabilities to the cedant resulting in no tax arising on the investment return in the reinsurer.

Although the business is still taxed as BLAGAB in the cedant, this may result in the investment return falling out of the charge to tax on I-E profits. Hence, there are additional rules that apply to the tax treatment of reinsurance of BLAGAB business.

Section 90 FA 2012 and its associated regulations, "The Insurance Companies (Taxation of Reinsurance Business)" Regulations 2018 (SI 2018/538) which became effective on 1 June 2018, seek to bring into account the investment return either in the cedant or the reinsurer.

These regulations apply to treaties entered into or amended after that date. Note that treaties entered into before 1 June 2018 that are still effective will apply the previous regulations included in SI 1995/1730.

(Of course, pre-November 1994 contracts continue to be grandfathered and so neither set of regulations should apply).

Treatment in cedant – imputed investment return

The 2018 reinsurance regulations provide that, where an insurance company reinsures any BLAGAB business, the cedant is required to bring in 'imputed income' into its I-E tax computation. The method of calculation of the imputed amount is set out in SI 2018/538 (Schedule/Reg. 12: 'Investment Returns').

Any imputed income would be calculated by reference to the average amount of liabilities which are reinsured, with an imputed interest rate applied based on the UK Gilt rate plus a margin of 4%. At the end of each policy under reinsurance, a true up may then be made to reflect the actual reinsurance return experienced on the policy. In line with the previous reinsurance regulations (SI 1995/1730), the regulations strictly require the imputed investment return to be calculated on a policy by policy basis.

Clearly, any imputation would likely result in a significant additional tax charge, alongside an administrative burden for the UK cedant.

Exemptions to imputation

There are however various circumstances when the cedant is not subject to imputation, if either:

a) The reinsured business falls within the definition of "excluded business" per Regulations 5 and 6 in SI 2018/538; and/or

b) the arrangements fall within prescribed arrangements as detailed in Regulations 7 - 11 in SI 2018/538.

The main types of prescribed arrangements are:

- Investment return is taxable as "I" in the UK (or UK permanent establishment of overseas) reinsurer;
- Investment return backing the reinsured business is taxable as "I" in the cedant;
- Reinsurance to an EEA (but not UK) reinsurer where the investment return in the reinsurer is subject to an I-E style charge at the UK policyholder tax rate (currently 20%);
- Reinsurance which does not shift investment income from the cedant to the reinsurer; and
- Pre-2013 protection business and immediate needs annuities, on the basis these books have little investment risk.

The first three are broadly permitting the investment return to be transferred provided it will be subject to an I-E type of taxation or similar. The last two are broadly where there is no investment element expected to arise.

Of particular relevance are the provisions under Regulation 8(3) SI 2018/538 wherein the investment return on assets backing the business is taxable as "I" in the cedant entity. This will disapply the imputation under section 90 to prevent any double charge on the assumption that the reinsurance treaty does not change the BLAGAB/non-BLAGAB investment income allocation in the UK cedant.

Per HMRC guidance in LAM10210, Regulation 8(3) can apply where there is a deposit back arrangement under the Reinsurance Treaty i.e. where assets are deposited or lent back to the ceding company as collateral to cover its insurance liabilities.

Therefore, to the extent that the cedant reflects the debits and credits arising from these assets in its GAAP accounts, the investment return on these assets should be brought into its I-E computation under the normal rules, and hence no imputation would be necessary to ensure that the investment return is taxable.

Treatment in the reinsurer

Where the reinsurer's business wholly consists of the reinsurance of life assurance business, its profits are generally assessable as trading income for UK corporate tax purposes (i.e. taxed under section 35 CTA 2009).

This basis reflects the nature of the business, which is confined to reinsuring risks from other insurers and not making new investments.

Reinsurance of life assurance business other than 'excluded business' is not BLAGAB (and thus will be part of non-BLAGAB long-term business). There is no explicit comment about the reinsurance of PHI business being PHI business, but on the basis that it is long-term business and not life assurance business it should fall within the definition. The key requirements of Regulation 5 SI 2018/538 which defines excluded business, are that the cedant is resident in the UK or resident outside the UK with a permanent establishment in the UK that is within the charge to corporation tax. Also that the cedant and reinsurer are part of a 90% owned group.

Where excluded business is written by the reinsurer it will be treated as BLAGAB and I-E rules must be applied to the income and gains relating to that business unless it is substantially non-BLAGAB business.

For pure life reinsurers, whether the company is taxed as a wholly non-BLAGAB company is determined by the same rule as for other life assurance companies – namely whether substantially all the long-term business is not BLAGAB. Unless there is a significant amount of excluded business, it should therefore be the case that the company will be taxed as a non-BLAGAB company.

Where BLAGAB that is not excluded business is reinsured it will be treated in terms of normal corporation tax rules and no special rules apply in the reinsurer.

Continuing concerns with the 2018 Regulations

Potential problems with the tax treatment of reinsurance contracts have been raised with HMRC but as yet there are no proposed changes to the regulations or primary legislation to address these concerns. These include the following points of concern that are considered to impact on reinsurance treaties and form barriers to commercial implementation:

- Anti-avoidance legislation in section 92(6) FA 2012 that aims to target commissions paid to cedants which are not taxed as I-E but are deductible. It could, however, apply to a wide range of payments made under a reinsurance contract such that they would potentially be considered to be within 'commission' and hence not be treated as an excluded receipt.
- Additional taxation arising from the separation of I-E and trade profits between the cedant (being taxed on I-E generated from assets retained in the cedant) and the reinsurer (being taxed on reinsurance profits).
- If reinsurance is followed by a transfer of business, non-BLAGAB losses can arise in the reinsurer. Following the transfer, the profit is taxed under the I-E regime leading to potential loss of tax for the Exchequer.

6.4. Loan relationships and derivative contracts

This section considers the key features of the loan relationship and derivative contracts tax regime (Parts 5, 6 and 7 CTA 2009) as they apply to companies writing long term business. In general, these rules apply to life assurance companies in a similar manner to other companies, but with certain specific rules to deal with the complexities of the wider tax regime. We have set out the key features of these regimes below, separately for loan relationships and derivative contracts.

Overview of loan relationship rules

The loan relationship tax regime applies to bring amounts into tax in respect of loan relationships, and in some cases wider money debts that are not loan relationships. A loan relationship is defined within the regime as a money debt (i.e. a legal debt obligation expected to be settled by way of cash or similar economic transfer) that has arisen from a transaction for the lending of money. Most importantly for life assurers, this will typically include bond/gilt holdings and most other debt instruments they hold as investments, plus loan liabilities entered into to fund trading operations (including regulatory debt in most cases).

These rules typically apply to all of the various tax computations required for companies carrying on long term business (i.e. BLAGAB I-E, trade profits computation and LTBFC etc) in the same manner as for other businesses. However, there are some exceptions to this rule, which are outlined below.

Broadly, for accounting periods starting on or after 1 January 2016, amounts arising in respect of loan relationships are generally brought into tax as they are recognised in the profit and loss account in a company's statutory accounts. Importantly for companies carrying on long term business, this will typically include both interest/finance return amounts and fair value movements on loan securities (often termed loan relationship capital movements).

For periods starting on or after 1 January 2016, any amounts which are recognised in the accounts in other comprehensive income ('OCI') or similar statements will not generally be brought into account assuming that these amounts will subsequently be recycled to the profit and loss account. Instead, these amounts are then brought into account when they are recycled to the profit and loss account in future periods. There was a specific transitional rule for amounts recognised in OCI prior to 2016 that were taxed under the 'old pre 2016 rules' to ensure these amounts are not subject to double tax when they are subsequently recycled to the profit and loss account.

In addition, an important exception applies to the 'follow the accounts' principle for hybrid capital instruments, where debits that are recognised in equity may be treated as tax deductible under these rules. This is discussed further below.

Overall, given the above principles, understanding the accounting treatment of loan securities is critical in assessing their tax treatment. We have summarised below a number of specific points within these rules where the tax treatment may diverge from the accounting treatment and specifically how these rules apply to companies carrying on long term business (noting this is not intended to be a wholly comprehensive list, but rather summarising the most common adjustments).

BLAGAB non-trading debits and credits

For the purposes of the I-E computation, loan relationship debits and credits are treated as non-trading debits and credits. A net BLAGAB loan relationship credit is treated as income for the purposes of the I-E rules (section 88(3)(a), FA 2012).

Special rules apply where a BLAGAB loan relationship deficit arises and the table below summarises the position for the purposes of the I-E rules. Under section 391 CTA 2009, the default rule for BLAGAB non-trade deficits is that any net deficit will be carried forward to the next accounting period as a deemed BLAGAB management expense. Any other treatment must be made in a claim. The possible uses of the non-trade deficit are summarised below:

Order of loss relief	Relevant legislation in CTA 2009	Against/Conditions
1. Use in the current year	Section 388	Must offset all of deficit against other net BLAGAB income and gains Not available for group relief Offset before any relief for adjusted management E

2. Carry back to the prior year (up to 3 accounting periods on LIFO basis)	Sections 389 and 390	Claim required within 2 years after the end of the period or otherwise by agreement. Carry back limited to excess of current period deficit over BLAGAB net income and gains (i.e. the excess of the deficit over and above that used in the current year as above) Offset in prior period is restricted to I–E loan relationship income reduced by an amount. That amount is the excess of adjusted BLAGAB management expenses and BLAGAB deductions for charges on income over and above the adjusted management expenses and charges on income that could be deducted absent any non-trading loan relationship profits without creating excess BLAGAB expenses. Carry back does not affect the minimum profits test for the period(s) carried back to.
3. Carry forward to future periods	Section 391	Applies automatically to the unused part of the current year deficit, subject to any carry back claim. Treated as deemed BLAGAB management expenses of the following period for the purposes of section 76.

In addition to these provisions, we note that where a company incurs a BLAGAB non-trade deficit in a period, the amount of BLAGAB trade losses available for relief under either section 37 (sideways relief against other profits of the company) or group relief is to be reduced by the amount of that deficit (section 126 FA 2012). See chapter 3 for more detail.

Specific provisions

Corporate interest restriction ('CIR')

For periods on or after 1 April 2017, the corporate interest restriction ('CIR') rules apply to limit the deductibility of interest expenses and other finance costs from the UK taxable profits of a corporate group. The rules limit the group's ability to deduct interest from UK taxable profits to the lower of:

- A defined percentage of the group's UK taxable EBITDA (i.e. Earnings Before Interest, Taxation, Depreciation and Amortisation). This will be either 30% or a percentage based on the group's worldwide interest/EBITDA ratio; and
- The worldwide consolidated net interest expense of the group.

There is limited flexibility to carry forward disallowed interest (or excess capacity) for relief in later periods.

These rules apply to insurers carrying on long term business as with other companies/groups. However, subject to fair value movements (see below) companies carrying on long term insurance business would typically expect to be in a structural net interest income position due to the significant interest income generated from their investments. Accordingly, we might expect companies carrying on long term insurance business (and the wider groups they are part of) to have nil disallowance under these rules each year.

It is possible though that in any individual year the fair value of an insurance company's debt investments falls such that the company (and therefore wider group) may have net loan relationship debits for an individual accounting period. This could then leave the group with a disallowance under these rules. To reduce this volatility in the application of these rules, it is possible to make an irrevocable election under s456 TIOPA 2010 to apply these rules as if an amortised cost basis of account were used for all loan relationships when calculating the group's net interest position. Where insurers make this election, a simplification applies in s456(6) TIOPA 2010 that should essentially ensure only interest and interest like returns are included in these calculations. We would then typically expect that where companies carrying on long term business make this election, they will reflect a net interest income position each year under these rules and in most cases will have nil disallowance.

It is also worth noting that the calculations required under the CIR rules also include debits and credits in respect of derivative contracts where the underlying subject matter of the contract is interest rates (the strict definition is more complex, but we have paraphrased the key principle here). There are specific rules around which derivative contracts may be in scope for financial services groups and so insurers should review their CIR calculations to ensure these amounts are correctly included/excluded from the definition of net finance costs as appropriate.

In addition to the above, there is a specific rule within the CIR legislation for insurers which is intended to exclude their 'portfolio investments' from the group under these rules. This may then have the effect of requiring these portfolio investments to apply the rules separately, increasing the chances they would have to disallow finance costs. A portfolio

investment is defined for these purposes as being an investment which would otherwise be included within the CIR group (so typically a subsidiary) where the insurer judges the value of the investment wholly or mainly by reference to its fair value. In practice, given regulatory restrictions on investments which may be held by insurers and the manner in which investments are managed/assessed, we would not typically expect this restriction to apply but this should be assessed by insurance groups.

Overall, we typically find that companies carrying on long term business have nil disallowance under these rules, but this is subject to them having correctly assessed their application and ensuring the appropriate elections have been made. In addition, even where there is nil disallowance, insurance groups will typically wish to file a nil return under these rules with HMRC each year (at least an abbreviated return, but a full return if the group wished to preserve the attributes carried forward under these rules).

AUTs and Offshore funds – 'Bond fund' rules

Holdings by any company in an authorised unit trust or offshore fund which, at any time during an accounting period of the holder, invested more than 60% in loan relationship assets (often referred to as 'bond funds') are treated for tax purposes as if they were loan relationships in their own right. This typically then means that any fair value gains and losses on these funds will be taxed in full if the 60% threshold is breached. This treatment is in place of the holding in a unit trust being taxed as a unit trust deemed disposal (see chapter 3.4).

Insurers and their asset managers/custodians will therefore need to ensure they receive appropriate information from their fund investments to understand if the '60% rule' will apply each year on a fund by fund basis.

Group Issues and Connected Companies

There are specific provisions within the loan relationship rules that deal with loans between connected companies. For these purposes, two companies are connected if one controls the other or they are under common control.

In particular, amounts must typically be brought into tax on connected company loans as if an amortised cost method of accounting were used. This generally means that insurers will exclude fair value gains and losses on these loans from tax, in both I-E and trading computations. However, sections 468 to 470 CTA 2009 provide an exception for lenders who are financial traders who use the fair value basis in their accounts and provided certain other conditions are met. These include that the asset is either listed on a recognised stock exchange or is a security with a redemption date of less than 12 months of issue. There must also be no more than a three month period during which more than 30% of the loan asset is held by connected companies. The connection between parties is ignored for connected party loans held as matched BLAGAB assets, subject to similar qualifying criteria (section 471 of CTA 2009).

Finally, there are various provisions that apply on either the impairment or release of connected company loans. These rules typically ensure lenders receive no relief for impairments of these loans, and in most cases a release of the loans would also be expected to be tax neutral. This can be complex though in ensuring such loan balances have been formally 'released' within the meaning of these rules.

Index-linked gilts

Section 399 and section 400 of CTA 2009 contain specific rules for gilt edged securities. A gilt edged security for these purposes is any loan security listed within Schedule 9 TCGA 1992, broadly being specified index linked gilts. As these assets are commonly held by UK life insurers, these rules will be relevant in many cases, noting as below these rules are specifically modified for companies carrying on long term business.

Where a company holds a relevant security, these rules require that amounts are brought into tax as if a fair value basis of accounting were applied to the asset (which will typically be the case for life insurers in any event, given these will be investment assets). Section 400 then specifies that in calculating the fair value gain or loss each year to be taxed, the carrying amount of the asset held at the start of the accounting is adjusted for the movement in RPI inflation in the accounting period. This effectively 'strips out' the effect of inflation from the gain or loss brought into tax on these assets.

Where a life insurance company holds these index-linked gilts, the above adjustment is required within the I-E computation as an adjustment to the loan relationship capital movements taxed each year. However, a specific restriction in section 112 Finance Act 2012 prevents life insurers from including an equivalent adjustment within trading computations (BLAGAB or non-BLAGAB), unless the security is held specifically as an investment of the index linked PHI business.

Group Continuity Provisions

The loan relationship tax rules contain specific provisions dealing with transfers of loan relationships between companies within a chargeable gains group (Chapter 4 of Part 5 CTA 2009). These 'group continuity' rules typically ensure these transfers are completed on a tax neutral basis between these companies.

However, these rules exclude any assets which are already subject to tax on a fair value basis, which will be the case for the majority of investment loan relationship assets owned by life insurers; the tax treatment of these assets on a transfer is expected to continue to follow the accounting treatment.

In addition to the above exclusion, the group continuity provisions do not apply on intra-group transfers to or from a life insurance fund, where the loan relationship moves between different gains 'boxes', mirroring the equivalent rules on chargeable gains (see chapter 6.1). Whilst these group continuity provisions do not apply on such 'box transfers', nor do the rules deem a market value disposal and re-acquisition of the assets as for chargeable gains assets. In most cases, we would expect then the overall fair value gains and losses on the relevant assets to be time apportioned between the relevant categories (in essence to apply commercial allocation methodologies) and be brought into tax accordingly.

There are also specific provisions that ensure the group continuity provisions apply where loan relationship assets are transferred as part of a transfer of long-term business, provided that the assets are in the same long- term business category/box before and after the transfer. This applies irrespective of whether the transfer is within a chargeable gains group i.e. for both intra-group and third party long term business transfers (see chapter 6.1). However, as above these rules will have no effect where assets are already taxed on a fair value basis, so this will mainly be of relevance to connected company loans, and loan relationships accounted for at amortised cost.

Finally, where assets cease or begin to be held for the purposes of the company's long term business, there is an immediate deemed disposal and reacquisition at fair market value (section 116(5)), which cannot come within the group continuity provisions.

Hybrid Capital Instruments/Regulatory debt

As noted above, the tax treatment of loan relationships will typically follow the accounting treatment. This would mean that by default any interest/coupon arising on loan relationships accounted for as equity instruments (including certain forms of regulatory debt) would not be tax deductible.

Recognising that financial services groups (and other regulated groups) must issue debt instruments with specific features for regulatory reasons, HMRC introduced specific rules which can permit tax relief for coupons paid on these instruments, even where these are accounted for as equity instruments. These rules (the 'hybrid capital instruments' provisions) replaced the previous regulatory capital securities regulations (SI 2013/3209) with effect from 1 January 2019. These rules may be relevant for life insurance groups, in particular in respect of restricted tier 1 securities issued under the Solvency II regulatory regime, or any legacy regulatory debt instruments still in force.

Where these rules apply (see below), a company may make an irrevocable election in respect of a specific loan security. Once that election has been made, any finance costs (or related expenses) etc recognised in equity in respect of the loan security may be treated as tax deductible (section 320B CTA 2009). Careful consideration may be required by insurers in respect of the tax treatment of any future conversion or write down of these instruments under the loan relationship rules, which may impact on their value in Solvency II own funds from the date of issue.

A hybrid capital instrument is defined for these purposes in section 475C CTA 2009 as:

- A loan relationship i.e. the instrument must be a debt instrument arising from a transaction for the lending of money as above (e.g. this will not typically be the case for 'shares' or similar);
- The debtor/issuer must be able to defer or cancel payments of interest in certain circumstances;
- The instrument must include no other 'significant equity features' (see section 475(2), but this broadly means that the loan must have no voting rights and any provisions for altering the amount of the debt must be limited to 'qualifying cases'); and
- The debtor/issuer must make an election for each loan security as above, within 6 months of the issue date.

Where these rules may be in point, we recommend insurers assess the potential impact of making an election and retain evidence that these conditions are met where relevant.

Accounting change

The loan relationship and derivative contract rules include specific provisions dealing with a change in accounting basis from one period to another (section 315 – 319 and section 612 – 615 CTA 2009 respectively). Broadly, these rules ensure that any differences in the accounts carrying value of loan relationships or derivatives where a company moves from one valid basis of account to another are brought into tax in full (by default, all in the year of transition).

Any transitional difference taxed under these rules is then spread over a 10 year period (on a straight line basis) where the change in accounting practice rules (SI 2004/3271) apply. These rules apply where the differences arise in respect of a loan/contract which is due for repayment more than 12 months after the accounts transition date. A specific

amendment to these rules required all differences arising in respect of IFRS9 to be spread irrespective of the repayment date. This is likely to be relevant to life insurers when IFRS9 comes into effect, expected to be alongside IFRS17.

Disregard regulations

In relation to the gains or losses arising on a foreign currency loan relationship hedging shares, Regulation 3 of the disregard regulations (SI 2004/3256, as amended) can apply to any company, including life assurance companies. These rules apply where a loan is 'matched' with a foreign currency underlying assets (typically shares). This broadly requires that the loan is either subject to formal hedge accounting with the underlying asset (rare in practice under modern accounting standards) or the company is party to the loan with an intention to hedge the economic risk of holding the underlying asset.

It is strongly recommended that each hedging loan relationship is considered on a case by case basis having regard to its tax treatment and the application of the disregard regulations. See further on the disregard regulations below.

Where this regulation does apply, we note that the disregarded foreign exchange gains and losses may come back into tax on the disposal of the underlying asset (per the 'BAGL regulations' – SI 2002/1970), typically as an adjustment to capital proceeds. The gain/loss may though be permanently eliminated from tax if the disposal of the asset is subject to SSE.

Foreign exchange differences

All exchange gains and losses on money debts are treated as credits and debits arising on loan relationships (section 328 of CTA 2009). Exchange differences on deferred acquisition costs are specifically included as money debts for the purposes of taxing foreign exchange, and only for those purposes (section 483 of CTA 2009).

Derivative contracts

As with loan relationships discussed above, derivative contracts that are within the specific tax regime in Part 7 CTA 2009 will typically be taxed in line with their accounting treatment, subject to certain specific tax adjustments. A derivative contract for these purposes generally takes its meaning from accounting practice, meaning that most derivative contracts that are recognised in a company's accounts will be taxed on a fair value basis in line with accounting practice.

This will also be the case for companies carrying on long term business, in particular in trade profits computations. However, as discussed below there are specific rules for life insurers which exclude certain derivatives (in particular equity related contracts) from these rules, with the CGT regime applying instead to tax these contracts. These rules are considered further below.

BLAGAB and other long term business amounts

As above, amounts arising in respect of derivative contracts are typically taxed in life insurance groups in line with their accounting treatment. In particular, Chapter 10 of Part 5 CTA 2009 applies to derivative contracts in the same way as it applies to loan relationships. Therefore:

- BLAGAB amounts are brought into tax for the purposes of the I-E regime as non-trading debits/credits;
- for the purposes of the trade profits calculations, derivatives are treated as trading in nature; and
- for determining the BLAGAB and other long term business loan relationship amounts an apportionment shall be made between the categories of business in accordance with the agreed commercial methodology that applies more generally to the long-term business.

This is subject to specific tax adjustments and ensuring that the contracts are not excluded from these rules due to their underlying subject matter.

Excluded underlying subject matter – Equity

Certain derivatives with an excluded underlying subject matter are carved out of the CTA 2009 derivatives income regime and instead remain subject to tax on a chargeable gains basis. The underlying subject matter of a derivative for these purposes is the index or underlying item which drives the value of the derivative contract e.g. equities for a put option over shares, or FX for a currency forward.

Excluded subject matter for these purposes include options and futures over intangible fixed assets (although these could be taxed under the intangible rules), derivatives over shares in a company (other than certain shares that are effectively taxed as loan relationships) and derivatives over rights of a unit holder under a unit trust scheme (other than a scheme/fund to which the bond fund rules apply).

Derivatives over shares in a company and rights of a unit holder under a unit trust scheme are only excluded where one of a list of certain other conditions are met (section 591 CTA 2009). One of the conditions is that the derivative is entered

into by a life insurance company and certain regulatory and accounting conditions are met (condition A in section 591 CTA 2009). Specifically this rule applies where:

- The contract is a plain vanilla contract (i.e. not an embedded derivative per the section 708 CTA 2009 definition) entered into by a company carrying on long term business;
- The derivative is an approved derivative for the purposes of Rule 3.2.5 of the Prudential Sourcebook for Insurers; and
- It must not meet the 'alternative accounting' condition in section 579(1)(b) CTA 2009 – this condition essentially means the contract must be accounted for as a derivative rather than a financial asset or liability (e.g. where a large up-front premium has been paid, this test may not be met).

Where all these conditions are met, an equity related derivative will be excluded from the derivative contract rules, and will typically be taxed on a CGT basis instead in the I-E computation (trade profits computations typically continue to follow the accounts under Part 3 principles). This will apply to many equity related derivative contracts in life insurance groups, which should ensure BLAGAB hedges over equities are effective for tax purposes.

Specific tax adjustments

Continuity provisions

The continuity of treatment provisions (Chapter 5 of Part 7 CTA 2009) are amended by section 636 CTA 2009 for companies writing long term business. The modifications provide that the continuity provisions do not apply on Intra-group transfers where the derivative is held for the purposes of the long term business. However, the rules can apply where the transfer is of assets forming part of the long term business fixed capital (both before and after).

Further, the continuity of treatment provisions do apply where derivative contracts are transferred as part of a transfer of long-term insurance business, provided that the assets are in the same category of assets before and after the transfer (see chapter 6.1).

As with the loan relationship rules, a change of the long term business asset category of a derivative contract (which is taxed as a derivative contract) is not within the 'box transfer' category change rules, and therefore there should be no deemed disposal resulting from such a change.

Disregard regulations

The disregard regulations (SI 2004/3256, as amended) can apply to any company, including life insurance companies, in relation to the gains or losses arising on the following types of derivatives as defined:

- interest rate contracts (Reg 9);
- commodity/debt contracts (Reg 8);
- currency contracts (Reg 7); or
- contracts hedging shares (Reg 4)

The disregard regulations can apply in certain circumstances to disregard amounts for tax purposes in cases, broadly, where there is a mismatch between the tax treatment of that derivative contract and the hedged item, and they attempt to mimic the previous hedge accounting treatments available under 'old' UK GAAP (i.e. SSAP 20). These regulations have been altered a number of times by subsequent Statutory Instruments and the resultant set of rules is complex.

As with the equivalent position for FX gains and losses discussed above, It is strongly recommended that each derivative contract is considered on a case by case basis having regard to its tax treatment and the application of the disregard regulations.

Hybrid regime

Derivatives over land, tangible moveable property and certain special cases of loan relationships are no longer subject to CGT but are subject to the hybrid regime set out in Chapter 7 of Part 7 CTA 2009.

Under the hybrid regime the quantum of debits and credits are based on the amounts reflected in the statutory accounts. However, they are not brought into account as income but instead as chargeable gains/losses. There are also specific loss relief provisions under these rules.

Whilst these rules may apply for the purposes of the I – E calculation (section 88(2)), they are highly unlikely to apply for the purposes of the BLAGAB or non-BLAGAB trade profits calculations, as these rules only apply where the derivative is not held for the purposes of a trade.

Embedded derivatives

Following the introduction of IFRS and modified UK GAAP, the regime set out in Chapter 7 of Part 7 CTA 2009 also applies to certain types of embedded derivative. The detailed rules for determining the treatment of embedded derivatives are set out within Chapter 7. There are specific provisions which apply bifurcation treatment (where financial instruments with derivatives embedded in them are split for accounting purposes into a host contract and the embedded derivative) to certain derivatives embedded in loans where the company does not bifurcate the instrument, but instead accounts for it at fair value through profit or loss.

6.5. Intangible fixed assets

Following the introduction of the 'new' life insurance tax rules in 2013, the treatment of intangible fixed assets in a life insurance company is generally consistent with the rules that apply for other companies i.e. the rules in Part 8 of CTA 2009 which typically follow accounting principles. There are, however, some exceptions to this which we've set out below.

Background

Before moving on to the current rules, we note that under the pre-FA 2012 rules for life insurers the accounts based regime in Part 8 CTA 2009 did not typically apply to life insurers, except in respect of royalties. This exclusion from these rules was set out in sections 901 to 903 CTA 2009, which were repealed as part of the FA 2012 changes to the life insurance tax regime.

Alongside these changes, a transitional rule was introduced to ensure there was no 'double count' of relief for expenditure on intangible assets. These are contained within paragraph 24 of Schedule 17 FA 2012 and they essentially exclude expenditure incurred before 1 January 2013 from the operation of Part 8 CTA 2009. It follows then that amortisation of pre-2013 expenditure (for example, 'old' DAC) is not deductible under these rules and intangible assets must be tracked accordingly in tax computations.

Current rules

In respect of expenditure on intangible assets incurred after 2012, in most instances the appropriate treatment is to follow the normal principles of the rules in Part 8 CTA 2009. Subject to certain exceptions, this will typically mean that the tax treatment of intangible assets created on or after this date will follow the accounting treatment. This includes for example treating amortisation of 'new DAC' assets as a deductible expense in both I-E and trade profits computations (noting the specific rules in I-E around the interaction with the seven year spreading of acquisition E – see chapter 3).

It is worth noting that the rules in Part 8 CTA 2009 have undergone multiple changes since their introduction (and also since the changes for life insurance companies from 1 January 2013). As such, whenever looking at the treatment of intangible fixed assets, it is important that the changes to the normal principles are taken into account. This includes for example ensuring that the 'customer related intangibles' rules are correctly applied by life insurers where these may be relevant.

Intangibles in the I-E computation

There are also specific rules which govern the treatment of intangibles in the I-E computation. These are contained within section 88 FA 2012. these rules require that:

- intangible assets held by the insurer are treated as non-trading in nature, for the purposes of the BLAGAB I-E computation only;
- intangible assets credits and debits referable to BLAGAB are netted;
- any net credit is taxable as income (Step 1 of section 73); and/or
- any net debit is treated for the purposes of section 76 as a deemed management expense for the period

It is worth noting that the treatment of a net debit changed from 15 September 2016. Prior to this date, if the net intangible position was a debit, the amount was carried forward to be relieved as E in the next accounting period.

Transfers of business

Finally, as discussed in chapter 6.1 on transfers of life insurance business, there are specific rules within the life insurance tax regime that deal with the treatment of VIF arising from an insurance business transfer (sections 129 and 130 FA 2012). These rules supersede Part 8 CTA 2009, and so these assets are not generally treated as intangible assets for tax purposes, notwithstanding their accounting treatment.

6.6. General annuity business

Section 83 FA 2012 deals with the deductions available within the I-E computation for certain payments to policyholders which are in respect of general annuity business. Payments to policyholders or annuitants are not within the definition of ordinary BLAGAB management expenses in section 77. General annuity business is not a defined term, though it is used throughout sections 83, 84 and 85. This handbook section deals only with 'qualifying BLAGAB annuities', which is defined below.

It is worth noting at this point that for most life insurers, the vast majority of their annuity business will be pensions business, and as such, will be treated as non-BLAGAB and not fall within sections 83-85.

The purpose of section 83 is to provide the life insurer with a BLAGAB expense deduction in respect of the income element of the BLAGAB annuity paid to a policyholder. The basis for this is that the income element is subject to tax on the policyholder. No deduction is available for the capital element of the BLAGAB annuity payment, and this is in line with the fact that the policyholder is not subject to tax on the capital element. This is to mirror the treatment for income tax purposes, where the capital element received by the annuitant is not taxed but the income element is taxed on the annuitant, so the company can obtain a deduction as BLAGAB expenses.

Mechanically, section 83 provides this deduction through Step 3 of the 'adjusted BLAGAB management expenses' calculation outlined at section 76.

In order to calculate the deduction, it must first be determined which payments fall within these rules. A payment will fall within these rules if it is in respect of a 'qualifying BLAGAB annuity', which is defined at section 83(3) as:

- An annuity; and
- Referable to the company's BLAGAB business; and
- Paid under a contract made by the company in an accounting period beginning on or after 1 January 1992.

Once the payments which fall within these rules have been determined you then calculate the deduction that is available as a BLAGAB management expense.

Per section 83(2), the deduction available is the difference between:

A. The total amount of those annuities (i.e. the annuities we have identified above) paid by the life insurer within the accounting period; and

B. The total of the amounts exempt under section 717 of ITTOIA 2005 (exemption for part of purchased life annuity payments) contained within the total identified within A above.

To simplify this section, this is effectively splitting the payment into the 'income' element and the 'capital' element, with the 'exempt' amount being the capital element. A deduction is then allowed in the I-E computation for the income element.

'Old' annuities vs 'new' annuities – Group annuity contracts and reinsurance treaties

For group annuity contracts where the contract was entered into in an accounting period prior to 1 January 1992, the treatment of the payment can fall into one of two buckets. Those which are treated as 'new' annuities and covered under the rules of section 83, and those which are treated as 'old' annuities and covered by Finance Act 1991 (Schedule 7, para 16). Finance Act 1991 still gives a management deduction in the I-E computation, but it uses a different calculation to the one set out at section 83.

The bucket into which the payment falls is covered by section 85 and depends on when the annuity contract first impacted the liabilities of the life insurer. If the liabilities are first impacted in a period beginning on or after 1 January 1992, then regardless of the contract date, the annuity will be deemed to have been entered into post-1 January 1992, and thus subject to the section 83 rules above.

If the liabilities are first impacted in a period beginning prior to 1 January 1992, then section 83 will not apply and Finance Act 1991 should be consulted for the appropriate treatment.

This treatment is the same for payments being made under a reinsurance treaty, with references to the life insurer's liabilities instead applying to the liabilities of the reinsurer.

Without this special provision, annuities payable under group annuity contracts and reinsurance treaties made before 1992 would be treated as 'old annuities' even where the underlying annuity is new. These arrangements may cover

several underlying annuities with different parties commencing at different times and – but for the fact that the overall contract or treaty is 'old', are in reality better considered as new. Section 85 achieves that.

Where the contract or treaty was made before 1992 but the underlying annuity first gave rise to a liability in 1992 or later, the payment is then within section 83 notwithstanding the date of the group annuity contract or reinsurance treaty. This allows 'new' annuities included within old contracts or treaties to be treated as within the new deduction rule. For example, a group annuity contract may start to pay out an annuity to a participant for the first time (in say 2013) and this provision includes that payment in section 83– but not payments where the underlying annuity was being paid in 1991.

Steep reduction annuities

If a qualifying BLAGAB annuity is a 'steep reduction annuity', the contract is split into separate deemed contracts and the deduction calculated separately for each. This is covered by section 84.

A steep-reduction annuity is one where there is a contingency (other than mortality) for a later payment to be substantially lower than at least one of the earlier payments. There is no definition for what constitutes 'substantial' for this section, but HMRC guidance at LAM04210 helpfully suggests that a reduction of less than 20% would not normally be regarded as substantial (though they retain the flexibility to judge this fact in light of any other circumstances when determining what is 'substantial').

The aim of section 84 is to prevent tax avoidance in cases of annuities where there is a large up-front payment followed by small annual payments. This section is designed as an anti-avoidance provision targeting the exploitation of the purchased life annuity rules. Without this provision, the whole consideration would be allocated across the life of the contract and so almost all the initial payment would appear to be deductible.

As an example, assume the annuity contract provides for an annuity for life but the amounts are £100,000 in years 1 to 5 and £2,000 for the rest of the life. The premium would be £500,000 for the first five years, plus – say £100,000 for convenience for the remaining years – ie.. a total of £600,000. Assume the life expectancy used is fifty years giving an exempt amount of £12,000 a year. The deduction – absent section 84 – would be £88,000 in years 1 to 5 and nothing thereafter (as the whole payment would be exempt). HMRC did not consider that this was an appropriate treatment, hence section 84.

Section 84 combats this by treating the steep reduction annuity as more than one annuity. The first annuity will reflect the period where the payments were consistent and did not include a steep reduction. The second annuity would then cover the period starting with the first 'steeply reduced' payment and any consistent payments that follows. If there is a further steep reduction, then a third annuity will be deemed to exist, and so on and so forth. This ensures that for each of the deemed annuities, that there is an appropriate split of any payment between 'income' (for which, as per s83, a management deduction will be available) and 'exempt' (i.e. the capital element for which no tax deduction is available).

The splitting applies as follows:

- take the date of the first reduced payment under the actual annuity and deem there to be an annuity consisting (only) of all the payments made by that date onwards – in the example, £100,000 a year for 5 years;
- deem there to be a second annuity comprising the payments in the original annuity not in the first deemed annuity – in the example, £2,000 for years 6 onwards (only);
- allocate the consideration for the original annuity between the two deemed annuities on a just and reasonable basis.

The restriction in section 83 reapplies the section 717 calculation to the deemed annuities and obtains a more reasonable deduction.

6.7. Mutuals and Friendly Societies

Overview

As with other life insurers, a mutual life insurer or Friendly Society is subject to corporation tax on its taxable profits which should be computed under the same life insurance tax rules as outlined in this handbook at first principles. However, there are certain specific rules which apply to mutuals and/or Friendly Societies which, in general, simplify their tax positions and relieve them from tax in certain circumstances. The specific rules apply where a business is treated as mutual for tax purposes, which may not always match the commercial definition of 'mutuality'. Although an insurer run wholly for the benefit of its policyholders will usually be regarded as mutual for tax purposes.

In addition, there are specific tax rules (in Part 3 FA 2012) which deal only with Friendly Societies e.g. introducing the concept of 'exempt BLAGAB' business for tax exempt savings plans, which may be written only by Friendly Societies. We have covered these rules specifically below.

Definition of 'mutual business' for tax purposes

There is no statutory definition of mutuality for tax purposes; this has instead been determined by reference to case law, supported by HMRC guidance.

The key principle derived from case law is that there must be 'complete identity' between the policyholders of the mutual insurer and those entitled to participate in the surplus generated from the mutual insurance business. This essentially means that all of the surplus generated from the mutual business must ultimately be returned (or be intended to be returned) to the policyholders in some form. Additionally, the case law has held that the rights of policyholders in a mutual to participate in the surplus must have a 'reasonable relationship' with their liability to contribute to it (note: this phrase 'reasonable relationship' does clearly leave room for variable rights between classes of policyholder as appropriate).

As a final point from the case law, it is clear from cases such as Municipal Mutual (Municipal Mutual v Hills, 16 TC 430, 1932) that an insurer may have both a mutual and non-mutual business, where the trades are distinct and carried on separately. This is not typically relevant for life insurance business, noting the HMRC guidance below on testing mutuality on a whole company basis for life insurers and that all of the cases where there have been found to be separate mutual and non-mutual businesses have involved general insurers (or discretionary business in the case of MDU).

The case law does not give a clear single test of mutuality; the various cases instead reinforce that mutuality will be tested by reference to the individual facts and circumstances of the insurer, applying the case law principles. The majority of the relevant cases are at least 50 years old (in many cases far older), but remain relevant today. In particular, as noted below a more recent case heard before the Courts has reinforced the importance of key principles from these historical cases.

The importance of these principles and testing their factual application is confirmed in supporting HMRC guidance, which also reiterated that the transition to the 'new' life insurance tax regime in 2013 was not typically expected to disrupt the case law definition of mutuality for tax purposes. This HMRC guidance (issued in 2013) also reiterated that mutuality should typically be tested by reference to the whole entity's position i.e. It would be inappropriate to test mutuality separately for the BLAGAB or non-BLAGAB businesses, applying the 'tax fiction' of these being separate trades for tax purposes. This latter principle is often particularly important for legacy PHI business written by mutual insurers. As noted above though, wholly distinct trades within an insurer (as with the Municipal Mutual case) may be treated separately from a mutuality perspective.

In summary, the question of whether an insurer is mutual for tax purposes will be determined by reference to its individual facts; there is no one factor that is conclusive, but the tax definition of mutuality will, in most cases, follow the commercial definition i.e. an insurer run wholly for the benefit of its policyholders will usually be regarded as mutual for tax purposes.

Update on recent case law on mutuality

Since the new life tax rules came into effect from 1 January 2013, there has been one further case of note on the topic of mutuality (Medical Defence Union Ltd [2020] TC 07713). This case concerned a mutual entity (Medical Defence Union – 'MDU') which provided discretionary protection policies to its members. The case concerned contracts of insurance that MDU had started distributing to its members on behalf of third-party insurers. The arrangements contained a mechanism which had the aim of keeping the total premiums for insurance to the minimum amount that MDU was able to negotiate with the third-party insurers; to the extent that if premiums paid for the year would be excessive, half of that excess was credited against the premiums payable in the following year.

The case turned on whether the payments received from the third party insurers really represented a reduction in the premiums paid by the members of MDU, or were really more by way of the nature of commission received by the organisation as a whole for the distribution of this business. In particular, the Courts found that whilst the body of members as a whole would benefit from these payments in the long run (as they all have the right to the surplus), this

activity was a separate trading activity carried on by the mutual company and so the profits could still be subject to tax in full i.e. as a separate trade as with the Municipal Mutual case.

Whilst this case does not in our view establish any new principles (or alter those established in the previous cases), it is likely to influence HMRC's approach in reviewing mutuality in other organisations. HMRC may seek to apply the facts in this case to other circumstances where the companies are able to trade profitably with third parties. However, we do not consider this should typically be relevant to life assurance business, which should generally be regarded as a single trade in line with the HMRC guidance above.

Impact of tax mutuality

Where an insurer is treated as a mutual for tax purposes, there is no requirement to compute its trading profits for the BLAGAB business; the taxable BLAGAB profits will be computed solely on the I – E basis with no requirement to compute an 'I-E receipt' (section 93 FA 2012). The I-E profits of a mutual insurer should be calculated on the same basis as for other insurers (see remainder of the handbook on this).

Any I-E profit of the BLAGAB business is subject to tax at the basic rate of income tax, currently 20%. There is no requirement to split these profits between policyholder and shareholder profits in computing this tax charge (they are all policyholder profits by definition). It follows from this, that there is no ability for a mutual insurer to claim or surrender group relief to any fellow group companies.

A mutual insurer should be wholly exempt from tax on non-BLAGAB business (including any legacy PHI business) and should not then be required to compute any trading profits for this business. ThIs is explicitly provided for in section 71(3) FA 2012, which states that neither Part 3 CTA 2009 (the trading profits provisions) nor any other provisions of the Taxes Acts should bring amounts into tax in respect of this business.

Strictly, a mutual insurer could still have a taxable LTBFC business if that sits outside the mutual trade, but in our experience this would be highly unusual. In particular, as discussed in the LTBFC chapter (chapter 5), it would be highly unusual for any assets of the insurer to sit wholly outside the long term business trade if the assets are ultimately available in some form to provide support to policyholder liabilities (typically the case for all assets of an insurer).

Friendly Societies

There is specific legislation in Part 3 FA 2012 dealing with the position of Friendly Societies (with certain additional rules in the Friendly Society tax regulations – SI 2012/3008).

This legislation firstly states that, subject to certain exceptions set out below, Friendly Societies should be taxed in line with 'mutual life assurance business carried on by insurance companies' (section 151 FA 2012). The above principles on mutuality etc are therefore relevant to Friendly Societies, noting this provision implies that Friendly Societies should be regarded as mutual by their nature.

It follows from this principle that any BLAGAB business in a Friendly Society is taxable on an I-E basis and non-BLAGAB business is exempt from tax (as above).

Exempt BLAGAB

The main difference in the tax regime for Friendly Societies from other mutuals is that of an additional 'exempt BLAGAB' category of business.This relates to specific policies which may be written by a Friendly Society (generally referred to as 'tax exempt savings plans'). Where a policy meets the conditions to be regarded as 'exempt BLAGAB' in section 155 FA 2012 (most crucially, the premiums limit, currently up to £300 per year), it should be exempt from tax in both the insurer and for any return to the policyholder.

It is therefore necessary for a Friendly Society to apportion their income, gains and expenses into three distinct categories of business: taxable BLAGAB business, exempt BLAGAB and non-BLAGAB long-term business. Only the first category should be taxable, but the legislation and supporting regulations require the results of all three businesses to be calculated and presented separately.

There are specific provisions around the transfer of this exempt BLAGAB business, typically dealing with transfers of engagements between Friendly Societies. Essentially, these rules ensure that any existing exempt BLAGAB business retains its status in the new Society. Strictly, this exempt BLAGAB category can be retained even where this business is transferred to a non-Friendly Society (although of course, the non-friendly society cannot write new exempt BLAGAB business).

Other matters

There is technically an additional category of exempt PHI policies, although this is typically no longer relevant as all PHI policies are likely to be exempt from tax as part of the combined non-BLAGAB business. This distinction is retained in the legislation though in case the non-BLAGAB business is treated as non-mutual.

Finally, there are certain provisions within Part 3 that deal with exemptions from tax for certain other categories of business within a Friendly Society (sections 164 and 165 FA 2012). The precise exemption that applies depends on when and if the Friendly Society is/was incorporated, but this is typically consistent with the above principles i.e. the exemptions ensure that the Friendly Society is only subject to tax on an I-E basis on its taxable BLAGAB business.

6.8. Overseas life insurance companies

An overseas life insurance company ('OLIC') is a company not resident in the UK carrying on life assurance there through a permanent establishment (PE), i.e. through a UK branch (section 139(1)). There are specific rules within the life assurance tax regime dealing with the tax treatment of these UK branches, which we have summarised in the sections below.

Before turning to the tax rules, we note that following the exit of the UK from the European Union in 2020, an OLIC is only permitted to write new insurance business in the UK if it is authorised by the PRA (including via the Temporary Permissions Regime). However, an EEA registered OLIC that operated in the UK prior to Brexit may be permitted to run off existing UK contractual obligations under the Financial Services Contracts Regime even where they have not sought direct UK authorisation. The relevant regulatory regime should not directly impact on the tax treatment of the UK branch of the OLIC, but the additional complexity in these regimes is likely to impact on the future UK tax profile of the OLIC.

The following specific tax provisions are relevant for OLICs included in the Finance Act 2012. There are only a few specific rules relating to OLICs with the normal rules for UK PEs applying with adjustments to take account of the different circumstances of an overseas life insurance company.

Chargeable gains box transfers

As with UK life insurance companies under section 116, OLICs are subject to 'box transfer' rules for chargeable gains assets, where assets held by the insurer move between the categories specified in these rules. The rules in section 117 contain specific provisions dealing with OLICs, to allow for the additional complexities of allocating assets to the UK branch in these companies.

Specifically, these rules apply where an asset (or part of an asset) held by an OLIC either ceases to be within one of the long term business categories listed below, or moves between these categories. Where these rules apply, the OLIC is treated for chargeable gains purposes as disposing of and then reacquiring the relevant assets for consideration equal to the fair value of the asset (or part) at that time.

The main categories are (section 117):

- UK assets matched to BLAGAB liabilities
- UK assets matched to other long term business liabilities
- UK assets held for the purposes of long term business relating to any with-profits fund, which are not matched to long term liabilities; where a company has more than one with-profits fund then the assets which are held by it for the purposes of a particular with-profits fund are treated as a separate category (section 117(3);
- UK assets held for the purposes of long term business but which are not matched to long term liabilities or within a with-profits fund.

For OLICs specifically, there is also a deemed disposal where an asset (or part of an asset) attributed to the UK permanent establishment ceases to be within one of the following broader categories and/or comes into another:

- UK assets held for the purposes of long term business;
- other UK assets;
- non-UK assets.

These rules are mainly intended to deem disposals of assets for UK tax purposes where these are re-attributed to other non-UK territories within the OLIC. This emphasises the importance of the attribution of assets between the UK branch and head office location for an OLIC, which should be done in line with OECD asset attribution principles as UK assets are those attributed to the UK permanent establishment under the provisions of CTA09 and in accordance with Part IV of the OECD Report on the Attribution of Profits to Permanent Establishments. These principles are discussed further in chapter 6.9 on transfer pricing.

(The reason for the two-tier category structure is the application of the section to a company to which section 66(4) or (5) or 67 applies – i.e. where the company is not within the I-E charge. In that case the first set of categories is ignored per section 117(4) and only the second 'higher' tier applies. Under the pre-2013 life tax regime this was covered by redefining the boxes instead.)

A matched asset is where some or all of the income is specifically referable to BLAGAB or non-BLAGAB business, this will primarily apply to linked policies however there may be assets backing other types of business where it could be

argued that the assets are matched. However, the definition of 'matched' requires there to be a contractual requirement underlying the allocation methodology.

A number of life assurance companies had to amend their capital gains tax systems in order to track the allocation of assets between with-profits funds under these new rules post 2013.

Share pooling

The share pooling rules (section 104 TCGA 1992) require securities of the same class to be treated as a single asset for chargeable gains purposes. Section 119 modifies these rules for UK life insurance companies so that a holding in securities is only pooled when they are within the same long term business category. Section 120 then similarly applies the share pooling rules in section 119 to UK securities attributed to overseas life insurance companies; these categories are equivalent to the box transfer rules above:

- UK securities matched to BLAGAB liabilities;
- UK securities matched to other long term business liabilities;
- UK securities held for the purposes of long term business relating to any with-profits fund, which are not matched to long term liabilities; where a company has more than one with-profits fund then the assets which are held by it for the purposes of a particular with-profits fund are treated as a separate category;
- UK securities held for the purposes of long term business but which are not matched to long term liabilities or within a with-profits fund;
- any remaining UK securities held otherwise than for the purposes of the company's long term business; and
- any non-UK securities.

An OLIC carrying on BLAGAB business in the UK will then needs to track disposals applying these rules.

These rules do not apply if the company is subject to tax on a trading profits basis (section 35 of CTA 2009) on the whole of its long-term business – i.e. a company to which section 66(4) or (5) or 67 applies where the company is not within the I-E charge. Where this is the case the share pooling rules apply to three categories:

- UK securities held for the purposes of long term business;
- UK securities held for the purposes of long term business; and
- non UK securities.

'UK securities' means so many of any class of securities as are attributed to the UK permanent establishment (section 120(5). (The securities can be situated in the United Kingdom or elsewhere).

A distinction is required between a holding in securities that would be regarded as a 1982 holding for chargeable gains purposes and section 104 holding (i.e. post 1982 holdings). These holdings should be treated as separate holdings when applying the long term business categories set out above (section 121).

A 1982 holding has the same meaning as section 109 TCGA 1992 and a section 104 holding has the same meaning as in section 104(3) of TCGA 1992 (section 121(5)).

Overall, these rules apply to OLICs in a similar manner to the equivalent rules for UK insurers, but with appropriate modifications again to allow for re-attribution of UK assets.

Intra-group transfers

Sections 171 and 173 of TCGA are disapplied where an OLIC acquires an asset which is in one of the (UK asset) long-term business categories in the company immediately after acquisition, or disposes of an asset which was in one of those categories immediately before (section 118(6)). Thus a no-gain no-loss intragroup disposal is not available. This applies even if the asset would be in an equivalent category in the transferor or transferee (unlike the position for transfers of business below).

Transfers of business

As discussed in chapter 6.1, usually under an insurance business transfer scheme assets are transferred at no-gain no-loss for tax for chargeable gains purposes under section 211 of TCGA 1992. However, there is a deemed disposal where an asset moves between categories (section 118).

For this purpose, the categories are (for an OLIC per section 118(5)(b)):

- the (UK assets) long-term business categories;
- UK assets not held for the long-term business; and
- non-UK assets.

It appears that if a company has separate with-profits funds categories, then moving an asset between those funds would also be a category move.

FOTRA securities

FOTRA stands for 'free of tax to residents abroad' and is a designation of certain securities (essentially certain UK gilts) that may be held without UK tax by non-residents (Section 1279 CTA 2009).

An OLIC may hold FOTRA securities and qualify for that exemption. If so, the relevant income should be treated as exempt from UK tax and there is a proportionate restriction of BLAGAB management expenses since as they are not taxable as BLAGAB profits, it is appropriate that relief should not be given for related expenses in calculating BLAGAB management expenses. The restriction (section 96) gives the proportion to be used in reducing the OLIC's UK tax deductible expenses:

$$\frac{\textbf{FOTRA}}{\textbf{FOTRA + I}}$$

where:

- FOTRA is the exempt FOTRA profit; and
- It is the Step 4 income (and gains) in section 83 – after relief for a non-trading deficit but before expenses. In effect this reduces the expenses in the proportion of non-taxable FOTRA profits to total income and gains.

Anti-hybrid rules

Finally, we note that OLICs as UK permanent establishments of overseas companies may be within the scope of the anti-hybrid tax rules. In particular, there are complex rules within these provisions which can deny UK tax relief for payments made by UK branches in certain circumstances (typically where they are also deducted in the parent territory). OLICs should consider the application of these rules to the deduction of expenses and/or the use of any tax losses in the UK permanent establishment.

6.9. Transfer pricing: Transactions involving life insurers

In general, the UK transfer pricing regime at Part 4 of TIOPA 2010 applies to life assurance companies in the same way as it applies to other UK companies and permanent establishments.

HMRC's Life Assurance Manual ('LAM') provides guidance on the application of the transfer pricing rules to life insurance companies at LAM12200 and outlines particular considerations for life companies to take into account in UK to UK transactions.

Service companies

The first of these particular considerations is the application of the rules to service companies in life assurance groups. Due to regulatory constraints (generally that a life assurer must not undertake commercial business other than life assurance business), life assurance groups are often required to set up separate service entities to carry out such activity which they then recharge to the life assurer at cost. This is generally accepted by HMRC as a basis for charging into life companies on the basis that such a charging basis will have been subject to regulatory scrutiny or constraint.

This was reflected when the transfer pricing provisions were originally introduced. During the passage of the Finance Bill through Committee Stage in 1998, the Paymaster General said:

'The right hon. Member for Wells referred specifically to the question of life insurance companies having to observe certain regulatory constraints. I want to give him a formal assurance again that the Government recognise that the special regulatory constraints to which life insurance business is subject can dictate the way in which a group's activities are structured and the price of intra-group transactions. In such circumstances, the Inland Revenue is prepared to accept that recharging at cost is likely to be a normal commercial practice and will not seek to adjust the company's tax liabilities on the basis that normal management services provided by another company should be appraised at more than cost. That is a specific assurance on the point he raised about a management company dealing with a life insurance company and providing services across the board.

… We sympathise with the life insurance industry, which should not be disadvantaged in any way by falling within the too narrow respects of the transfer pricing regime. Such measures are necessary to prevent tax avoidance.'

Hansard Finance Bill Standing Committee E, 9 June 1998 Afternoon Pt I

HMRC may challenge particular cases where the arms' length position differs from the regulatory position, however this is rare in practice.

Tax rate differential

HMRC also highlight that UK to UK transfer pricing risk is considered higher in life assurance groups given the differential rates of tax applied to life groups. As BLAGAB profits in the I-E calculation may be subject to tax at the policyholder rate and charges into the life company may be deducted at a different rate to the income in the service provider this can create a discrepancy. In recent years, the standard rate of corporation tax has typically been lower than policyholder rates which is linked to the basic rate of income tax of 20% (e.g. at the time of writing 19%). However, this is set to change in FY23 when the standard rate of corporation tax is set to increase to 25%.

Again, HMRC acknowledge that regulatory constraints make any transfer pricing manipulation less likely, and therefore the tax rate differential would only be considered if there are reasons for concern.

Intra-group reinsurance

Another risk area for life groups is intra-group reinsurance. Our experience is that HMRC will look for areas of reinsurance arrangements where elements of artificiality and contrivance are present or where the sole purpose of the arrangement is to reduce UK tax and query whether the transaction would have taken place at all between third parties. This discussion would be approached not only from a transfer pricing corporate tax perspective, but also from a Diverted Profits Tax perspective.

In order for an intra-group arrangement to be recognised and respected for tax purposes, it is important to consider the commercial rationale for the reinsurance transaction and whether the transaction would have taken place at all between third parties (often referred to as the 'would argument'). While it is open for HMRC to challenge the terms and conditions of the reinsurance arrangement, the technical difficulty involved in establishing an arm's length premium or rider commission in many cases means that HMRC will not necessarily engage in pricing arguments until they are satisfied the transaction would have taken place between independent third parties.

Intra-group transfers of business

In respect of intra-group transfers of business, section 129 FA 2012 provides that if that section applies, Part 4 of TIOPA 2010 does not. The effect is to not require a fair value approach for the intra-group transfer. (This makes sense, as if an arm's-length principle applied, it would appear to overturn the whole raison d'être of section 129.) This is the only explicit reference to the transfer pricing provisions in the transfers of business rules.

Anecdotally, per the pre-FA 2012 rule, section 83(2B) of the Finance Act 1989 overrode the transfer pricing rules (this subsection provided that where assets were transferred out of the long term insurance fund, the fair value of those assets, reduced by any amounts brought into account in lines 12 to 15 of Form 40, were deemed to be brought into account as additional investment appreciation). This provision however has no counterpart in the FA 2012 rules.

For other insurance business transfers – including with-profits transfers – the principle should be that they are expected to be at arm's length. For an intra-group with-profits transfer, it might be possible to apply Part 4 of TIOPA 2010 if an element did not appear to be at arm's length, but that should not be expected to be the case (since it should be the case that the with-profits actuary should be seeking arm's length terms in their valuation).

Transfer pricing documentation

On 23 March 2021, HMRC released a public consultation document setting out proposed changes to the UK's transfer pricing documentation requirements. Two main changes are being considered:

- The introduction of mandatory Master File and Local File requirements (in line with the BEPS Action 13 Report and current OECD guidance) for UK multinational enterprises (MNEs) within the scope of Country by Country (CbC) reporting requirements (i.e., with turnover in excess of EUR 750 million); and
- The introduction of additional disclosures about cross border transactions with associated enterprises to be included in an International Dealings Schedule (IDS) as part of the annual tax return, for all businesses within the scope of UK transfer pricing rules.

These proposals could substantially increase the transfer pricing compliance obligations for many UK taxpayers, and HMRC has invited contributions from businesses, advisers and representative bodies on 'possible options and design ideas which could benefit UK business and HMRC'. The consultation period was relatively short, running for 10 weeks with a deadline of 1 June 2021.

The proposals are consistent with the greater focus we are seeing HMRC place on primary evidence, behaviours and governance demonstrated in the preparation of transfer pricing documentation. The potential addition of an 'evidence log' to the Local File requirements (which would require taxpayers to compile evidence supporting its transfer pricing policies contemporaneously), and the IDS could take the UK to the more complex end of the global compliance spectrum for transfer pricing documentation.

6.10. Insurance special purpose vehicles

Regulation

Under the EC Reinsurance Directive, the PRA permits insurance special purpose vehicles ('ISPVs'), which are subject to special authorisation procedure and regulation. For example, solvency requirements are less stringent than for fully regulated entities meaning that where reinsurance is concerned, less capital may be required to be held by an insurance group where an ISPV is used in place of a traditional intra-group reinsurance vehicle. ISPVs are permitted in order to simplify insurance business securitisations and encourage innovation in the capital management of insurance companies.

The PRA updated SS8/17 Insurance special purpose vehicles in May 2020 and the Supervisory Statement includes amendments to the ISPV Part of the PRA Rulebook and a new Multi-arrangement ISPV New Risk Assumption Notification Form. The Supervisory Statement elaborates on the regulator's expectations where there may be changes to the funding of ISPVs and sets out expectations on risk transfer requirements. Overall although solvency requirements are less stringent, it should be noted that ISPVs have to comply with relevant Solvency II and PRA/FCA rules such as SMCR etc. that applies to all regulated entities.

Tax definition

The tax definition of an ISPV (in section 139(1) FA 2012) follows the definition adopted by the FCA at INSPRU 1.6.2 and defines an ISPV as an undertaking which:

- assumes risks from insurance or reinsurance undertakings, and
- which is fully funded by debt or other financing mechanisms which are fully subordinated to the reinsurance obligations of the undertaking.

Per HMRC's manual at LAM10400, in a reinsurance context, what distinguishes ISPVs from other reinsurers is that they are fully funded to meet their reinsurance liabilities and therefore are not exposed to the same insurance risk as ordinary reinsurers.

For tax purposes an ISPV is only an 'insurance company' per section 65 and therefore within the life tax rules in Part 2 FA 2012, if it is a BLAGAB group reinsurer. That definition ensures that BLAGAB group reinsurers are within the charge to tax under I-E.

There are in reality however three types of ISPV:

- BLAGAB group reinsurers, (insurance companies for tax purposes);
- Intra-group ISPVs (non-BLAGAB group reinsurers) and
- Capital markets ISPVs (securitisation ISPVs).

BLAGAB group reinsurers

A BLAGAB group reinsurer is in broad terms an entity:

- which writes BLAGAB;
- its long-term business other than BLAGAB is not 'substantially all' the long-term business; and
- all its life assurance business is excluded business per regulations (SI 2018/538 for reinsurance arrangements entered into on or after 1 June 2018).

The key requirements of Regulation 5 SI 2018/538 which defines excluded business, are that the cedant is resident in the UK or resident outside the UK with a permanent establishment in the UK that is within the charge to corporation tax. Also that the cedant and reinsurer are part of a 90% owned group. Technically the business of the BLAGAB group reinsurer is subject to the I-E tax rules of Part 2 FA 2012 but the application of the Reinsurance Regulations SI 2018/538 in this regard is very complex and requires careful navigation. See further on reinsurance in chapter 6.3.

Intra-group ISPVs

Intra-group ISPVs writing only non-BLAGAB long-term business (or insubstantial amounts of BLAGAB) are taxed on their trade profits under section 35 of CTA 2009 based on their statutory accounts. They are not 'insurance companies' as defined and thus the rules in Part 2 FA 2012 do not apply. If a loss arises in the ISPV it is possible to group relieve this loss against profits in other group companies, including the cedant.

Capital market ISPVs

The taxation of securitisation companies which securitise financial assets is governed by The Taxation of Securitisation Companies Regulations 2006 (SI2006/2396). Securitisation ISPVs are also governed by The Taxation of Insurance Securitisation Companies Regulations 2007 (SI 2007/3402).

Securitisation ISPVs are taxed on their trading profits under section 35 of CTA 2009. The accounts for this purpose are accounts drawn up in accordance with UK GAAP as it applied for a period of account ending on 31 December 2006, excluding the application of FRS 26 (i.e. 'old' UK GAAP). This is in line with the wishes of the industry and is intended to avoid some of the volatility associated with 'new' UK GAAP or IFRS in order to be attractive to long-term investors. (Regulation 6 SI 2007/3402).

Some provisions in the tax legislation (e.g. group relief provisions) are disapplied for capital market ISPVs (Regulation 8(3)). However, the transfer pricing rules are not disapplied. Any other SPVs included in the securitisation structure are taxed on the return they make, in accordance with the banking securitisation legislation at SI2006/2396.

Part 2 of the Finance Act 2012: Insurance companies carrying on long-term business – Quick reference guide to provisions

Section	Purpose	Notes
	Chapter 1 – Introductory	
Outline of provisions of Part		
55 – Overview	Introduces part 2 and explains what is covered in each Chapter.	
Meaning of 'life assurance business'		
55 – Meaning of 'life assurance business'	Defines life assurance business (including definition of capital redemption business).	
Meaning of 'basic life assurance and general annuity business'		
57 – Meaning of 'basic life assurance and general annuity business'	Defines basic life assurance and general annuity business as life assurance business other than seven specified descriptions of that business, namely: • pension; • CTF; • ISA: • immediate needs annuities; • reinsurance of life business (with exclusions); • OLAB; and • new protection business	The definitions of the exclusions on the left can be found in sections 58-62 (or for immediate needs annuities, under section 725 of ITTOIA 2005). The practical difference from the pre-2013 life tax regime is the exclusion of protection business (as defined in section 62) from the BLAGAB definition. Additionally, while immediate needs annuities are included within the definition of life assurance business, they are excluded from BLAGAB under this section.

Section	Purpose	Notes
58 – Section 57: meaning of 'pension business'	Defines pension business as: • effecting or carrying out contracts for the purposes of a registered pension scheme; or • reinsurance of such business.	Retrocession of pension contracts are expected to not be pension business on this definition (but would be part of the non-BLAGAB long-term business since they would be excluded from BLAGAB at bullet 5 above anyway – subject to the exclusions).
59 – Section 57: meaning of 'child trust fund business'	Defines child trust fund business as life assurance business consisting of effecting or carrying out child trust fund policies – but not the reinsurance of such business.	Reinsurance or retrocession will be part of the non-BLAGAB long- term business since they would be excluded from BLAGAB at bullet 5 above – subject to the exclusions.
60 – Section 57: meaning of 'individual savings account business'	Defines individual savings account business as life assurance business consisting of effecting or carrying out individual savings account policies – but not the reinsurance of such business.	Reinsurance or retrocession will be part of the non-BLAGAB long- term business since they would be excluded from BLAGAB at bullet 5 above – subject to the exclusions.
61 – Section 57: meaning of 'overseas life assurance business'	Defines overseas life assurance business as life assurance business consisting of: • effecting or carrying out contracts with policyholders or annuitants not resident in the UK, except for – excluded business and – reinsurance of overseas life assurance business	Excluded business here means business which is pension/CTF/ISA business within the meanings of section 58-60, or business of any description excluded by regulation made by HMRC Commissioners (see section 61 for more details). Reinsurance or retrocession will be part of the non-BLAGAB long- term business since they would be excluded from BLAGAB at bullet 5 above – subject to the exclusions.
62 – Section 57: meaning of 'protection business'	Defines overseas life assurance business as life assurance business where: • benefits payable cannot exceed premiums paid except on death or incapacity; and • the contract is made on or after 1 January 2013. In applying the benefits test, ignore: • inducements; • insignificant excesses; and • highly unlikely outcomes. Variations of contracts create a new contract.	The intention is to exclude contracts with a significant investment element. Surrender values on such contracts may be less than the premiums – particularly in the early stages – but that is not the test. Policyholders of investment – type contracts should expect to get more than their premiums back on surrender. The exclusions take out: • non-cash inducements (which even if of small value might exceed the first premium, or may be received before any premiums are in fact paid) • insignificant excesses (measured by proportion) – although insignificant is not defined; and • highly unlikely outcomes – this is an attempt to forestall policies which include a special feature which may – in extreme circumstances – give a high value output; an example could be using £1 of a premium to buy a lottery ticket with any winnings returned to the policyholder.

Section	Purpose	Notes
Meaning of ‘long-term business’ and ‘PHI business’		
63 – Meaning of ‘long-term business’ and ‘PHI business’	Defines long-term business as: (a) life assurance business; or (b) other business effecting or carrying out other contracts of long- term insurance. Also defines PHI business as the business in (b).	In the pre-2013 life tax regime long-term business was similarly defined as effecting or carrying out contracts of long-term insurance, and PHI as long-term insurance other than life assurance business.
Meaning of contract of ‘insurance’ or ‘long-term insurance’ and ‘insurance company’		
64 – Meaning of ‘contract of insurance’ and ‘contract of long-term insurance’	Defines ‘contract of insurance’ and ‘contract of long- term insurance’ by reference to the Regulated Activities Order (S.I. 2001 No. 544).	‘Contract of insurance’ is defined by Article 3(1) of the FISMA (Regulated Activities) Order 2001, and ‘contract of long-term insurance’ means a contract which falls within Part 2 of Schedule 1 of that Order.
65 – Meaning of ‘insurance company’	Defines an insurance company as a person carrying on the activity of effecting or carrying out contracts of insurance, with permission under Part 4 of FISMA 2000 to carry on that activity. A friendly society within the meaning of Part 3 is explicitly not an insurance company, and an insurance special purpose vehicle (see section 139) is an insurance company only if it is a BLAGAB group re-insurer.	Note that subsection 2(b) and (c) regarding a person carrying on the business in the UK through a permanent establishment (within EU passport or treaty rights) have both been repealed since the original enactment of the Act by SI 2019/689, reg. 21(2)(a)
Chapter 2 Charge to tax on I – E basis etc.		
Separate businesses etc.		
66 – Separate businesses for BLAGAB and other long-term business	This clause provides that the business of a life insurance company is to be treated as two separate businesses for corporation tax purposes – BLAGAB and other long-term business.	Where a company carries on non-BLAGAB life assurance business and PHI business, those are treated as one single business. Defines ‘non-BLAGAB long-term business’ at section 66(5). While all non-BLAGAB long-term business is aggregated into a single trade, short term business is specifically segregated.
67 – Exception where BLAGAB small part of long-term business	Allows BLAGAB to be aggregated with non-BLAGAB long-term business in a single trade where the BLAGAB business is de minimis.	De minimis uses the ‘all or substantially all’ test. No ‘bright line’ threshold is specified in primary legislation, but it is considered that this should be expected to be if BLAGAB were 5% or less of total long-term business.

Section	Purpose	Notes
BLAGAB taxed on I – E basis		
68 – Charge to tax on I – E profit	Applies to the charge to tax on the 'I – E profit' of the BLAGAB business.	I – E profit defined at section 73. This gives a separate charging provision specifically for BLAGAB.
69 – Exclusion of charge under s.35 of CTA 2009 etc.	For BLAGAB, disapplies the trading profit charge (section 35 of CTA 2009), any other tax on income under any of the Corporation Tax Acts, and the taxation of chargeable gains to the extent referable to the BLAGAB business.	The exclusion for chargeable gains, to the extent referable to BLAGAB, is determined in accordance with Chapter 4 (Apportionment rules for I – E charge). This section and section 68 apply the specific I – E charging provision instead of separate heads of charge e.g. loan relationships.
70 – Rules for calculating I – E profit or excess BLAGAB expenses	Provides that the rules in Chapter 3 (The I – E basis) determine whether the BLAGAB business has an I – E profit or excess BLAGAB expenses and that this calculation shall be by reference to GAAP accounts unless specifically provided otherwise.	This section effectively states the starting point for I – E to be GAAP accounts.
Non-BLAGAB long-term business		
71 – Charge to tax on profits of non-BLAGAB long-term business	Charges non-BLAGAB long-term business to tax under section 35 of CTA 2009 – i.e. the general trading profits charge.	The general rules for trading profits in CTA 2009 are modified by Chapter 6 (trade calculations applying to long-term business), Chapter 7 (trading apportionment rules) and Chapter 10 (transfers of business). Mutual business is specifically excluded from the charge to tax on profits of non-BLAGAB long-term business (in contrast to section 68 and I – E profits). Without this provision it might be argued that an income – type charge could apply to a mutual insurer in respect of non-BLAGAB long-term business.
PHI only business		
72 – Companies carrying on only PHI business	Disapplies the tax rules in respect of long-term business where a company only carries on PHI business.	There is no de minimis equivalent of section 67 – the company must be 'wholly' PHI. This effectively treats a PHI company as a general insurance company and dividends are generally exempt.

Section	Purpose	Notes
	Chapter 3 The I – E basis	
Introduction		
73 – The I – E basis	Provides a prescriptive methodology (using a six step process) for determining whether a company has an I – E profit or excess BLAGAB expenses for an accounting period (essentially how to calculate I – E taxable profits). Provides that where a company has excess BLAGAB expense in an accounting period, that these can be carried forward to the next accounting period (in accordance with section 76).	This combines the calculation of a taxable I – E profit and excess BLAGAB expenses.
Definitions of expressions comprising 'I'		
74 – Meaning of 'income'	Provides a meaning for 'income' that should be brought into account in step 1 of the six step process set out in section 73 in calculating I – E taxable profits.	Lists various items of income or credits such as credits in respect of loan relationships, derivative contracts, intangible fixed assets, certain company distributions etc. Refer to section 74 for the full list. No account is to be taken of income which arises from an asset forming part of the long-term business fixed capital of the company.
75 – Meaning of 'BLAGAB chargeable gains' etc.	Explains how to calculate the BLAGAB chargeable gains of the company for an accounting period that need to be brought into account in step 2 of the six step process set out in section 73 in calculating I – E taxable profits. Provides that allowable losses can be deducted from the calculation of chargeable gains.	Similar to the 'income' meaning above, there is an exclusion under this section for chargeable gains or allowable losses arising on assets forming part of the long-term business fixed capital of the company.
Definitions of expressions comprising 'E'		
76 – Meaning of 'adjusted BLAGAB management expenses'	Defines and details the five steps required to calculate adjusted BLAGAB management expenses of the company for the accounting period.	This includes ordinary BLAGAB management expenses adjusted for the treatment of acquisition expenses and any BLAGAB trade loss relieved for the accounting period.

Section	Purpose	Notes
77 – Section 76: Meaning of 'ordinary BLAGAB management expenses' etc.	Defines and explains the terms 'ordinary BLAGAB management expenses' and 'referable to the accounting period' for the purposes of section 76. This section also details seven specified descriptions of 'excluded amounts'.	Section 77(3) is regarding where acquisition expenses incurred in the accounting period fall to be debited in successive accounts drawn up for successive periods of account. Under this clause, these expenses are treated as if they were all debited in the accounts drawn up for the first of those periods of account. Section 77(4) details the 'excluded amounts' and includes amounts of a capital nature, re-insurance premiums, refunds of premiums, non-commercial amounts payable by the company etc. (see section 77 for full list).
78 – Section 76: meaning of other expressions	Defines and explains the terms • 'other relevant rules' • 'deemed BLAGAB management expense for the accounting period' • 'expenses reversed in the accounting period' • 'BLAGAB trade loss relieved for the accounting period' for the purposes of section 76.	Section 78 is a catch-all definition clause whereby several terms are collated and defined in one place. Some of these definitions have changed since the original enactment of the Act, for example in the second definition to include Structures & Buildings allowances for management assets and remove R&D; and in the fourth definition to update the provision for post 1 April 2017 loss rules.
79 – Spreading of acquisition expenses	Defines and details the calculation to adopt if the BLAGAB management expenses for the purposes of section 76 include acquisition expenses. Restricts the relief for acquisition expenses in any one accounting period to one – seventh of the adjusted amount of the expenses referable to that accounting period. Six – sevenths is therefore deferred and is relieved as deemed BLAGAB management expenses for succeeding periods.	Section 79 is a direct rewrite and simplification of the old provisions under the old pre 2013 life tax regime detailing how to calculate the spreading of acquisition expenses, although anecdotally based on recent industry discussions relevant to IFRS17 and a suggestion by HMRC, there is a question mark over the future necessity for such a tax rule considering the industry business profile of more recent years.
80 – Section 79: Meaning of 'acquisition expenses'	Defines and explains the term 'acquisition expenses' for the purposes of section 79 and elaborates on the definition of 'the acquisition of business' when it comes to other expenses payable solely or partly for the purpose of the acquisition of business.	While subsection 2(a) excludes commissions for persons who collect premiums from house to house, it does not prevent such commissions counting as expenses under subsection 2(b) or (c).
81 – Amounts treated as ordinary BLAGAB management expenses	Details the relevant permissive rules that apply for the purpose of treating amounts as ordinary BLAGAB management expenses for the purposes of section 76. Reference in any relevant permissive rule to investment business, is to be read as a reference to BLAGAB business for the purposes of the section.	Step 1 of section 76 refers to section 81 when it comes to calculating what the ordinary BLAGAB management expenses of a company are. Section 76 therefore specifically includes as ordinary BLAGAB management expenses, amounts as a result of relevant permissive rules as for the purposes of Chapter 2 of Part 16 of CTA 2009 (companies with investment business). The relevant permissive rules of CTA 2009 are detailed at section 81(3).

Section	Purpose	Notes
		An amount is treated as an ordinary BLAGAB management expense as a result of this section only so far as it would not otherwise be regarded as an ordinary BLAGAB management expense.
82 – Restrictions in relation to ordinary BLAGAB management expenses	Sections 1249(1),(2) and (3) (unpaid remuneration) and 1251(1) and (2) (car hire) of CTA 2009 apply to an amount which is (or would be) regarded for the purposes of section 76 as an ordinary BLAGAB management expense of an insurance company. References in these sections to investment business, is to be read as a reference to BLAGAB business for the purposes of section 76.	This details the restrictions that must be taken into account when calculating ordinary BLAGAB management expenses. This is a direct reference to relevant sections of CTA 2009 as the starting point of the BLAGAB computation is accounting profits. If an amount is reduced as a result of 1251(1) and (2) of CTA 2009 (car hire) or a corresponding rule, there is subsequently a rebate of hire charges or a debt in respect of any hire charges is released and the rebate is deductible as a reversed expense per Step 4 in section 76, the amount that would otherwise be deductible is reduced by 15%.
83 – General annuity business	Gives a deduction in respect of 'qualifying BLAGAB annuities' paid as a deemed BLAGAB management expense (included in section 76 at Step 3). The amount is the difference between the annuity paid and the exempt amounts under section 717 of ITTOIA 2005 (exempt part of purchased life annuities). Only applies to post – 1992 contracts (but see section 85). Restriction for steep-reduction annuities by splitting the contract into 'good' and 'bad' contracts.	Division of the steep-reduction annuity can be an iterative approach – if the initial split gives another steep-reduction annuity, split that one in the similar fashion, and so on.
84 – General annuity business: meaning of 'steep-reduction annuity' etc.	Defines a steep-reduction annuity as one where there is a contingency (other than mortality) for a later payment to be lower than at least one of the earlier payments.	The aim is to prevent annuities where there is a large up – front payment followed by small annual payments. The whole consideration would be allocated across the life of the contract and so almost all the initial payment would appear to be deductible. The restriction in section 83 reapplies the section 717 calculation to the deemed annuities and prevents this. Index-linked upwards-only annuities would not be caught (unless there were other features).

Section	Purpose	Notes
85 – General annuity business: payments made in pre-1992 accounting periods	Applies to group annuity contracts and reinsurance treaties where the contract or treaty was made before 1992 but the underlying annuity first gave rise to a liability in 1992 or later. The payment is then within section 83 notwithstanding the date of the group annuity contract or reinsurance treaty.	This allows 'new' annuities included within old contracts or treaties to be treated as within the new deduction rule. For example, a group annuity contract may start to pay out an annuity to a participant for the first time (in say 2013) and this provision includes that payment in section 83 – but not payments where the underlying annuity was being paid in 1991. For old annuities, see paragraph 16 of Schedule 7 to the Finance Act 1991, which is amended (but not repealed) by Schedule 16 to the Finance Act 2012. (Note that the sidebar of this section does not appear to be a good description of its content).
Special rules applying to I – E basis		
86 – Separate property businesses for BLAGAB etc.	Provides that a company is treated as carrying on a separate UK or overseas property business where it holds land/property otherwise than for the purpose of the company's long term business.	Provides that each of the following is treated as a separate business: • exploitation of land matched to BLAGAB liabilities • exploitation of land matched to other long term business liabilities • exploitation of land not matched to long term business liabilities
87 – Losses from property businesses where land held for long-term business	Disapplies Chapter 4 of Part 4 of CTA 2010 (loss relief: property business) for the businesses in section 86. Instead, the loss is treated as a deemed management expenses under Step 3 of section 76.	Group relief is not explicitly mentioned. HMRC might be expected to argue that the treatment of the property loss is as expenses, and the subsequent inclusion in the calculation of a BLAGAB I – E profit or excess BLAGAB expenses automatically gives relief for the loss (and thus section 137(7) of CTA 2010 prevents group relief being also available).
88 – Loan relationships, derivative contracts and intangible fixed assets	Defines how loan relationship, derivative contract and intangible asset profits and losses are to be treated for the purposes of the Income calculation for the I – E rules. Three main provisions: • deeming that for the purposes of the I – E calculation, BLAGAB business does not constitute any part of a trade or • property business. • ensuring that BLAGAB income is the excess of BLAGAB credits over BLAGAB debits. • indicating the relevant loss relief provisions for loans and derivatives, and provides the loss relief rules for intangible fixed assets.	The provisions apply only for the purposes of the I – E rules and ensures that the I – E rules operate on a net income basis, not a gross income and expense basis. Since the provisions only apply for the purposes of the I – E calculation, the long-term business is capable of being a trade for the purposes of the life assurance trading calculation. Note that the provisions for loss relief in respect of loans and derivatives are more flexible that intangible losses, which must be carried forward and treated as deemed management expenses of the following period.

Section	Purpose	Notes
89 – Miscellaneous income and losses	This section provides a definition for 'BLAGAB miscellaneous income' and 'BLAGAB miscellaneous losses'. It provides that miscellaneous income should be included in the calculation of I – E taxable profits to the extent that miscellaneous income exceeds miscellaneous expense. Where the company has excess miscellaneous losses in an accounting period, this excess is carried forward to the next accounting period and is treated as a deemed expense.	
90 – Investment return where risk in respect of policy or contract re-insured	Imposes a deemed income charge on the cedant where BLAGAB risk is reinsured out. The deemed income is treated as referable to BLAGAB and is brought in as income in Step 1 of section 73. Calculation of the deemed income, and exclusions from the charge, are defined in Regulations. Reinsurance arrangements are grandfathered if both the underlying policy and the reinsurance contract were in existence before 29 November 1994.	Relevant references are to the Insurance Companies (Taxation of Re-insurance Business) Regulations, SI 2018/538 reg 7, reg 12, and Schedule.
91 – Regulations under section 90(4): supplementary provision	Sets out what may or must be covered by the Regulations under section 90(4).	The Regulations must: • provide that the investment return in the final period for a policy is the excess of the overall profit in respect of the policy over the investment return in prior periods; and • cater for transfers of business. The Regulations may: • provide for certain amounts to be taken into consideration in the calculation, namely – premiums and similar payments by the cedant; – commissions and similar payments by the reinsurer; – previous deemed investment return, net of tax (at a defined rate); and – rates of return;

Section	Purpose	Notes
		• cater for transfers of business; • make different provision for different circumstances; and • make consequential changes &c. As above the current regulations are per the Insurance Companies (Taxation of Re-insurance Business) Regulations, SI 2018/538.
Deemed I – E receipts		
92 – Certain BLAGAB trading receipts to count as deemed I – E receipts	The appropriate amount of any non-excluded BLAGAB trading receipts are treated as an I – E receipt.	Excluded receipts include premiums, re-insurance receipts, items outside the charge to corporation tax by reason of exemption, payments received under the Financial Compensation Scheme and payments received from other insurance companies to enable the company to meet its policyholder obligations.
93 – Minimum profits test	A comparison must be made between the I – E profit or excess BLAGAB expenses of the period with the BLAGAB trade profit of the period.	The BLAGAB trade profit is adjusted for loss utilisations under sections 94, 124, 124A and 124C.
94 – Adjustment of I – E profit or excess BLAGAB expenses	In the section 93 minimum profit test calculation any BLAGAB non-taxable distributions are to be included as I – E receipts.	
Non-BLAGAB allowable losses		
95 – Use of non-BLAGAB allowable losses to reduce I – E profit	Where a company is taxed on an I – E basis this section allows the deduction of non BLAGAB allowable losses against the shareholders share of I – E profit in accordance with section 2A(1) of TCGA 1992, as permitted by section 210A TCGA 1992.	
Overseas life insurance companies		
96 – Expenses referable to exempt FOTRA profits	Disallows part of the BLAGAB ordinary management expenses where an overseas life insurance company has exempt FOTRA profits.	FOTRA stands for 'free of tax to residents abroad' and section 1279 of CTA 2009 exempts the income on a FOTRA security from tax if the exemption condition is met. This is a term of issuance of particular securities, essentially certain UK gilts. The purpose of the section is to give a proportional disallowance of expenses which would otherwise be offsetable against the FOTRA income.

Section	Purpose	Notes
Chapter 4 Apportionment rules for I – E charge		
Introduction		
97 – Application of Chapter	The Chapter applies to companies carrying on both BLAGAB and other business and contains rules allocating investment income and losses, expenses and chargeable gains to BLAGAB.	
Allocation of income, losses and expenses		
98 – Commercial allocation	Sets out how to apportion income, debits or other losses, and expenses to BLAGAB for the purposes of the I – E calculation.	Allocation must be consistent with that for trade profits purposes (section 115) and in an overseas life assurance company must also be consistent with the asset allocation to permanent establishment. Defines debits or other losses as: • UK or overseas property business losses (for the section 86 businesses); • loan relationship or derivative contracts debits; • intangible fixed assets debits; and • miscellaneous transactions losses per section 89.
Allocation of chargeable gains and allowable losses on disposals of assets		
99 – Application of sections 100 and 101	Introduces sections 101 and 101 as determining chargeable gains and allowable losses referable to BLAGAB.	
100 – Assets wholly or partly matched to BLAGAB liabilities	Explains that where assets are wholly/partly matched to a BLAGAB liability the appropriate portion of any gain/loss arising on a disposal is referable to BLAGAB.	For the meaning of matched, see section 138.
101 – Commercial allocation for disposals not wholly dealt with by section 100	Sets out how to apportion gains and losses arising on the disposal of Non-matched assets to BLAGAB for the purposes of the I – E calculation.	Allocation must be consistent with that for income etc (section 98) and trade profits purposes (section 115) and in an overseas life assurance company must also be consistent with the asset allocation to permanent establishment.

Section	Purpose	Notes
		Back in the consultation period prior to Finance Act 2012, HMRC noted that they did not expect a company to have to complete an onerous look back exercise over a significant period to determine the contribution an asset had made to the business over its lifetime. But the legislation is not explicit on this point.
	Chapter 5 I – E profit: policyholders' rate of tax	
Tax rate on policyholders' share of I – E profit		
102 – Policyholders' rate of tax on policyholders' share of I – E profit	Provides that the policyholders' share of the I – E profit is chargeable to corporation tax at a rate equal to the basic rate of income tax that begins on 6 April in the financial year.	This implicitly only applies to BLAGAB. Sub-section 5, reintroduced under FA 2021, provides guidance on the exclusion of the policyholders' share of profits when considering the small profits tax rate applicable to shareholders' share of profits.
103 – Rules for determining policyholders' share of I – E profit	The policyholders' share of the I – E profit of a mutual business is the whole of that profit. For other businesses: • if there is no BLAGAB trade profit the policyholders' share of the I – E profit is the whole of that profit; • if the company has a BLAGAB trade profit and the adjusted amount is less than the I – E profit then the difference is the policyholders' share; • if the company has a BLAGAB trade profit and the adjusted amount is equal to or more than the I – E profit there is no policyholders' share.	[There is a slight quirk in the wording in that if the company has a BLAGAB trade profit for the period (before loss relief etc) but the adjusted amount is nil (after loss relief etc), the calculation falls in the second, not the first, bullet to the left. This should have no practical effect. The adjusted amount is defined in section 104 below.]
104 – Meaning of 'the adjusted amount'	The following adjustments are made to BLAGAB trade profits: • BLAGAB trade profits are reduced if relief is available under section 124, 124A, or 124C (carry forward of BLAGAB trade losses); • if after the section 124, 124A or 124C relief the BLAGAB trade profit is nil then the adjusted amount of the BLAGAB trade profit for the purposes of section 103 is nil;	The adjusted amount of the BLAGAB trade profit cannot be negative (but it may be nil).

Section	Purpose	Notes
	• if the BLAGAB trade profit after section 124, 124A, or 124C relief (if any) is positive and non-taxable distributions are received the BLAGAB trade profit is reduced by deducting the shareholders' share of those distributions.	
105 – Meaning of 'BLAGAB non-taxable distributions' and 'shareholders' share'	BLAGAB non-taxable distributions are those non- taxable distributions referable to BLAGAB. The shareholders' share of the BLAGAB non-taxable distributions is determined by the fraction the BLAGAB trade profit of the company bears to the sum of BLAGAB non-taxable distributions and the total of the amounts given by the calculations required by steps 1 to 3 in section 73.	There are three main points to note: • the calculation is BLAGAB; • the denominator is by reference to taxable amounts; and • the denominator does not include a deduction relief for expenses.
Policyholder tax and calculation of BLAGAB trade profit or loss		
106 – Deduction for current policyholder tax	In calculating the BLAGAB trade profit or loss a deduction is allowed for an amount equal to the amount of corporation tax charged at the policyholders' rate of tax on the policyholders' share of the company's I – E profit.	This deduction is for policyholder tax in the computation rather than an accounting figure.
107 – Expenses or receipts for deferred policyholder tax	This section provides for an adjustment to BLAGAB trade profits in respect of deferred tax and sets out details of how the adjustment should be calculated.	This is using the accounting figures. The deduction – or charge – is for the difference between the closing deferred policyholder tax balances for the current period and the previous period.
108 – Meaning of 'the closing deferred policyholder tax balance' etc.	Defines the closing deferred policyholder tax balance by reference to: • 'BLAGAB matters'; and • whether the provision is calculated wholly by reference to the policyholders' rate of tax.	BLAGAB matters' are: • excess BLAGAB expenses; • tax – deferred acquisition expenses; • other future I – E expenses; • BLAGAB allowable (capital) losses; • spread section 212 gains or losses; • other matters relating to future chargeable gains or losses (e.g. unrealised gains); and • amounts added by Regulation.

Section	Purpose	Notes
Chapter 6 Trade calculation rules applying to long-term business		
109 – Application of Chapter	This Chapter contains rules regarding the calculation of the BLAGAB trade profit or loss and also of non- BLAGAB profits.	
110 – Allocations to policyholders	A deduction is allowed in calculating profits for any amount allocated to policyholders or annuitants.	Restrictions are placed on the deduction for amounts of a capital nature.
111 – Dividends and other distributions	Dividends or other distributions are to be brought into account as receipts in calculating the trading profits. This applies to both BLAGAB and non-BLAGAB trades.	
112 – Index-linked gilt – edged securities	The rules at CTA 2009 sections 400 to 400C regarding adjustment for changes in index do not apply unless the loan relationship is a qualifying PHI relationship.	
113 – Receipts or expenses relating to long-term business fixed capital	Profits, receipts and expenses arising from a company's long-term business fixed capital assets are excluded from the computation of profits.	
Chapter 7 Trading apportionment rules		
114 – Application of Chapter	Details how to allocate accounting profits, losses and adjustments between BLAGAB and non-BLAGAB long-term business.	
115 – Commercial allocation of accounting profit or loss and tax adjustments	Sets out how to apportion profits and losses between BLAGAB and other long-term business of the company.	Allocation must be consistent with that for income etc. (section 98) and in an overseas life assurance company must also be consistent with the asset allocation to permanent establishment.
Chapter 8 Assets held for purposes of long-term business		
Transfers of assets from different categories		
116 – UK life insurance companies	Where an asset (or part of an asset) held by a UK life insurance company ceases to be within one of the long-term business categories or moves category then this is treated as a disposal for consideration equal to the fair value of the asset (or part) at that time.	These are sometimes referred to as the 'box transfer' rules.

Section	Purpose	Notes
117 – Overseas life insurance companies: Rule corresponding to s.116	Where an asset (or part of an asset) held by an overseas life insurance company ceases to be within one of the UK long term business categories and moves within another such category then this is treated as a disposal for consideration equal to the fair value of the asset (or part) at that time.	The UK long-term business categories are consistent with section 116: • UK assets matched to BLAGAB liabilities • UK assets matched to other long-term liabilities • UK assets held for the purposes of any with-profits fund which are not matched to its long-term business liabilities • UK assets held for the purpose of long-term business, but which are not matched to long – term liabilities or held for the purposes of any with-profits funds.
118 – Transfers of business and transfers within a group	Triggers a disposal at market value by the transferor where, following a transfer of business, an asset is in a different category in the hands of the transferee compared with the position before the transfer in the hands of the transferor. However, this does not apply if both, or one of, the transferee or transferor are charged to tax under section 35 of CTA 2009. In addition, the section prevents sections 171 and 173 of TCGA 1992 from applying to a life insurance company where there is a disposal or acquisition of an asset (or part of an asset) by the life insurance company and before or after the acquisition the asset is in the category of assets which are held for the purposes of the long-term business of the company.	The section sets out rules for both UK life insurance companies and overseas life insurance companies.
Share pooling rules		
119 – UK life insurance companies	The share pooling rules (section 104 of TCGA 1992) require securities of the same class to be treated as a single asset for chargeable gains purposes. This section modifies these rules for UK life insurance companies so that a holding in securities is only pooled when they are within the same long term business category.	The pools are: • securities matched to BLAGAB; • securities matched to other long-term business; • securities in a with-profits fund and not matched (separate pools for each with-profits fund); • other securities held for the long-term business; and • securities not held for the long-term business.

Section	Purpose	Notes
120 – Overseas life insurance companies: Rule corresponding to s.119	The share pooling rules (section 104 TCGA 1992) require securities of the same class to be treated as a single asset for chargeable gains purposes. This section modifies these rules for overseas life insurance companies so that a holding in securities is only pooled when they are within the same long term business category.	The pools are: • UK securities matched to BLAGAB; • UK securities matched to other long-term business; • UK securities in a with-profits fund and not matched (separate pools for each with-profits fund); • UK other securities held for the long-term business; • UK securities not held for the long-term business; and • Non-UK securities.
121 – Sections 119 and 120: Supplementary	This section makes a distinction between a holding in securities that would be regarded as a 1982 holding for chargeable gains purposes and section 104 holding (i.e. post 1982 holdings). 1982 holdings and section 104 holdings should be treated as separate holdings when applying the share pooling rules in section 119.	
Long-term business fixed capital		
122 – Assets forming part of long-term business fixed capital	Assets that form part of the long-term business fixed capital are to be regarded as assets held otherwise than for the purpose of long-term business.	For the meaning of long-term business fixed capital see section 137.
Chapter 9 Relief for BLAGAB trade losses etc		
The reliefs		
123 – Relief for BLAGAB trade losses against total profits	Allows 'sideways' and carry-back relief (under section 37 of CTA 2010) for a BLAGAB trade loss against total profits.	Applies Chapter 5 of CTA 2010 even though BLAGAB cannot be charged under section 35 CTA 2009 on its trade profits.
124 – Carry forward of pre-1 April 2017 BLAGAB trade losses against sanl subsequent profits	Allows carry forward of BLAGAB trade losses arising in accounting periods beginning before 1 April 2017 if no relief is given under section 37 of CTA 2010 (as applied by section 123). Can be relieved against future BLAGAB trade profits for the purposes of sections 93 (minimum profits) and 104 (shareholders' share for calculation of policyholders' profits).	This section has been revised since the original enactment of FA 2012 to relate specifically to pre-1 April 2017 losses. Section 137(7) of CTA 2010 (restriction of double relief relating to group relief) is read into the section, as well as 'other applicable provisions'.

Section	Purpose	Notes
		Other applicable provisions are expected to include, for example, section 944 CTA 2010 (transfer of losses to a successor company) and section 674 of CTA 2010 (change of ownership and major change in nature or conduct of trade).
124A – Carry forward of post-1 April 2017 BLAGAB trade losses against subsequent profits	Similar to section 124 but focused on post-1 April 2017 BLAGAB trade losses where no relief is given under either section 37 of CTA 2010 (as applied by section 123) or part 5 of CTA 2010 (as applied by section 125). Amounts can be relieved against future BLAGAB trade profits for the purposes of sections 93 (minimum profits) and 104 (shareholders' share for calculation of policyholders' profits).	Relief under this section is also subject to restriction or modification in accordance with section 137(7) of CTA 2010 (restriction of double relief relating to group relief) as well as 'other applicable provisions'. The company must continue to carry on BLAGAB business in the subsequent periods.
124B – Excess carried forward post-1 April 2017 losses: relief against total profits	If an insurance company has post-1 April 2017 BLAGAB trade losses being carried forward to an accounting period ('the later period') under section 124A or 124C, but it is not deducted from the company's BLAGAB trade profits of that later period, then the company may claim relief under section 124B. This allows for the unrelieved loss amount to be deducted from the company's total profits of the later period.	A claim under this section must be made within the period of two years after the end of the 'later period' (or within such further period as an Officer may allow). If the company is a 'Solvency II insurance company' (as defined), the company may not make a claim under this section to the extent that the unrelieved amount is wholly or partly a 'shock loss' (as defined). For relief of shock losses, refer to section 124E.
124C – Further carry forward against subsequent profits of post-1 April 2017 loss not fully used	Allows for the further carry forward of post-1 April 2017 BLAGAB trade losses if they are not relieved under: • 124A (against BLAGAB trade profits), • 124B (against total profits), or • Part 5A CTA 2010 (group relief for carried-forward losses). Relief for the amount carried forward is given against BLAGAB trade profits, see paragraphs 3-7.	The company must continue to carry on BLAGAB business in the subsequent periods. Relief is given against BLAGAB trade profits for the purposes of sections 93 (minimum profits) and 104 (shareholders' share for calculation of policyholders' profits).
125 – Group relief	Allows group relief for a BLAGAB trade loss. The provision also excludes the policyholders' share of the I – E profit from the calculation of 'gross profits' for the purposes of section 105 of CTA 2010 (restriction on surrender of other losses as group relief).	Applies Part 5 of CTA 2010 even though BLAGAB cannot be charged under section 35 CTA 2009 on its trade profits. For provision about the application of Part 5A of CTA 2010 (group relief for carried-forward losses) in relation to BLAGAB trade losses, see sub-sections (3) to (5) of section 188BB CTA 2010.

Section	Purpose	Notes
126 – Restrictions in respect of non-trading deficit	Where the company has both a BLAGAB trade loss and a BLAGAB non-trading deficit (debtor loan relationships and derivative contracts) the amount of the BLAGAB trade loss which can be surrendered under section 37 or Part 5 of CTA 2010 (sideways/carry-back relief and group relief, as discussed above) is restricted by the relevant non-trading deficit. This restriction is also relevant to post April 2017 losses carried forward under section 124B as such a loss (or amount of a loss) is available for relief under section 124B only so far as it exceeds the amount of the relevant non-trading deficit.	The provisions in section 126 have been updated since the original enactment of FA 2012, primarily to reflect the pre- and post-1 April 2017 loss rule changes.
127 – No relief against policyholders' share of I – E profit	'Corporate' loss reliefs are not available against the policyholders' share of I – E profit as determined in section 102.	The reliefs concerned are: • Section 124B (relief of excess carried-forward BLAGAB trade losses against total profits) • section 37 of CTA 2010 (sideways trade loss relief) including relief for BLAGAB or non-BLAGAB trade losses; • other reliefs under Chapter 2 (trade losses) or 4 (property losses) of Part 4 of CTA 2010; • group relief (under Part 5 of CTA 2010, including as applied by section 125; as well as under Chapter 3 of Part 5A CTA 2010); • qualifying charitable donations (other than for mutuals); and • non-trading loan relationship deficits other than amounts referable to BLAGAB. The non-trading loan relationship deficit would be on items not used for the long-term business (or general business). In effect this would be 'shareholder fund' borrowings.

Section	Purpose	Notes
Chapter 10 Transfers of long-term business		
Transfers of BLAGAB		
128 – Relief for transferee in respect of transferor's BLAGAB expenses	Relief is given to the transferee for the transferor's acquisition expenses and the transferor's excess BLAGAB expenses when there is a transfer of BLAGAB (either in whole or in part) under an insurance business transfer scheme from one insurance company to another.	Where relief for acquisition expenses is subject to spreading, the spreading will continue in the hands of the transferee, but in relation to the transferred amounts, an accounting period of the transferee is treated as having begun on the date after the date of the transfer. The effect of this is that if that deemed accounting period is less than a year only a proportion of the one – seventh of the full amount of the acquisition expenses will be deductible. Unrelieved excess BLAGAB expenses incurred in connection with the business transferred are available to the transferee in the same way as they would have been to the transferor. For both acquisition expenses and excess BLAGAB expenses, it is assumed that: • the transferor had continued to carry on the transferred business after the transfer; and • the transferor had an accounting date ending with the date of the transfer (if that had not otherwise been the case). • Where only part of the business is transferred, an appropriate part of the unrelieved expenses is to be transferred. Relief given to the transferee under the section is given instead of that to the transferor (i.e., no double relief).
129 – Intra-group transfers and demutualisation	Treatment of amounts debited or credited in the transferee and transferor for the purposes of the calculation of the BLAGAB trade profit where there is a transfer of BLAGAB under an insurance business transfer scheme either: • as an Intra-group transfer (as defined); or • in connection with a demutualisation (as defined). The section sets out the rules for BLAGAB trade profits in respect of Intra-group transfers or those in connection with a demutualisation.	In the transferor, any amounts that are debited or credited in the GAAP accounts in respect of the transfer are ignored. Similarly, in the transferee, any amounts that are debited or credited in the GAAP accounts in respect of the transfer are also ignored.

Section	Purpose	Notes
	For a transfer to be Intra-group, the transferor and transferee must be members of the same group (as defined in section 135) when the transfer occurs and the transferee must be within the charge to corporation tax in relation to the transfer. Therefore, there needs to be careful consideration of the rules in relation to Intra-group cross – border transfers where the transferor is within the charge to corporation tax, but the transferee is not. A transfer is in connection with a demutualisation if : (a) it is for the purposes of the conversion of a company (under the law of any territory) from one without share capital to one with share capital (without any change of legal personality), or (b) it is a transfer by a mutual life insurance company of all, or substantially all, of its basic life assurance and general annuity business to an insurance company which is not a mutual life insurance company. This section, however, does not apply to a with-profits fund transfer. This is a transfer from a with-profits fund to a fund that is not a with-profits fund (or vice versa). Transfers which are part with-profits fund transfer and part not with-profits fund transfer, should presumably be split into two.	Section 139 states that any reference to the debiting or crediting of an amount in accounts drawn up by an insurance company is a reference to bringing in the amount as a debit or credit in— • the company's profit and loss account, income statement or statement of comprehensive income (or other comprehensive income), • a statement of total recognised gains and losses, or • any other statement of items used in calculating the company's income or gains, or its losses or expenses, for accounting purposes, irrespective of how any account or statement is described or otherwise referred to. However, if there is a difference between the amount recognised in the transferee on the transfer and the amount recognised in the transferor on the transfer, the difference (being the excess of the amount recognised in the transferor over the amount recognised in the transferee) is brought into account in the BLAGAB trade profits computation of the transferee. See section 129 for details on what these amounts are. To the extent the section applies then the transfer pricing rules in Part 4 TIOPA 2010 do not apply to the transfer.
130 – Transfers between non- group companies: present value of in-force business	Sets out the treatment of amounts debited or credited in respect of an asset for PVIF for the purposes of the BLAGAB trade profits calculation in the transferee following a non-group transfer of business under an insurance business transfer scheme. This is a specific rule which applies where the transferee has an asset that represents, as at the time of the transfer, the value of future profits arising from the business (or part of the business) transferred, and the asset is not one to which Part 8 of CTA 2009 (intangible fixed assets) applies (for example PVIF). Where there is such an amount, any amounts in respect of the asset that are debited or credited in accounts drawn up by the transferee in accordance with generally accepted accounting practice are to be taken into account in calculating the BLAGAB trade profit or loss of the transferee.	There are no specific other rules for the treatment of amounts recognised on transfer in the transferee or transferor in non- group transfers. Therefore, under first principles, any amounts in the GAAP accounts are taxable or allowable subject to any rule to the contrary (for example, capital versus revenue). For a transfer to be non-group, the transferor and transferee cannot be members of the same group when the transfer occurs (as defined in section 135). Note that section 139 states that any reference to the debiting or crediting of an amount in accounts drawn up by an insurance company is a reference to bringing in the amount as a debit or credit in— • the company's profit and loss account, income statement or statement of comprehensive income (or other comprehensive income),

Section	Purpose	Notes
	However, no account can be taken of such an asset if it is internally generated for accounting purposes.	• a statement of total recognised gains and losses, or • any other statement of items used in calculating the company's income or gains, or its losses or expenses, for accounting purposes, irrespective of how any account or statement is described or otherwise referred to. The section only applies to transfers taking place on or after 1 January 2013.
Transfers of non-BLAGAB long-term business		
131 – Application of ss. 129 and 130 to transfers of non-BLAGAB long-term business	Application of the rules in sections 129 and sections 130 to transfers of non-BLAGAB long-term business under an insurance business transfer scheme for the purposes of the non-BLAGAB long-term business trade profits calculation.	The section sets out that the rules in section 129 and 130 apply in the same way for non-BLAGAB in the trade profits calculation as it does for BLAGAB.
Transfers of long-term business: Anti-avoidance		
132 – Anti-avoidance	Sets out an anti-avoidance rule for insurance business transfer arrangements where there is an insurance business transfer scheme on or after 1 January 2013.	This anti-avoidance rule covers any corporation tax advantages and not just trade profit advantages. The anti-avoidance rule applies if under an 'insurance business transfer scheme' there is a transfer on or after 1 January 2013 of BLAGAB or non-BLAGAB long-term business and the main purpose, or one of the main purposes of the 'insurance business transfer scheme arrangements', is an 'unallowable purpose'. The 'insurance business transfer scheme arrangements' includes the transfer under the Scheme and any arrangement (agreement, scheme, transaction or understanding) with a connection (direct or indirect) to that scheme made on or after 1 January 2013. There is an 'unallowable purpose' if it: • consists of securing a corporation tax advantage (section 1139 CTA 2010) for the transferee, transferor or any other company; or • it is not amongst the transferee's, the transferor's or any other company's business or other commercial purpose.

Section	Purpose	Notes
133 – Clearance procedure	Clearance procedure for transfers of business anti-avoidance rule.	Clearance can be obtained, provided that the HMRC Commissioners are satisfied that: • the main purpose, or one of the main purposes, of entering into the transfer arrangements is not an 'unallowable purpose'; or • the transferor and transferee are members of the same group and the transfer produces no tax advantage for the group (i.e., it is at least tax neutral across transferee and transferor).
134 – Section 133: supplementary	Sets out particulars for clearance procedure under section 133.	A clearance application under section 133 must be made in writing and contain particulars about the insurance business transfer arrangements. Further information may be requested by HMRC (by notice) once the clearance application has been submitted. This may be imposed within 30 days of receipt of the application by HMRC. If this notice is not complied with within 30 days (or a longer period as the HMRC Commissioners allow) then HMRC do not need to consider the application. HMRC must give notice of their decision within 30 days of the application being received or within 30 days of the notice for further information being complied with. Note that if the information provided to HMRC does not fully and accurately disclose all facts and consideration that are material for the decision of HMRC, then the notice HMRC deliver under section 133 is voided.
Interpretation		
135 – Meaning of 'group' of companies	Meaning of group of companies for the purposes of Chapter 10.	A group of companies is defined in the same way as for a capital gains group in section 170(2) to (11) of TCGA 1992.
Chapter 11 Definitions		
136 – Meaning of 'BLAGAB trade profit' and 'BLAGAB trade loss'	Formally defines BLAGAB trade profit and BLAGAB trade loss.	Specifies that sections 106 to 108, Chapters 6 and 7, and sections 129 and 130 need to be considered.

Section	Purpose	Notes
137 – Meaning of 'the long-term business fixed capital'	Defines long-term business fixed capital as structural assets held for the purposes of the long-term business.	Structural asset includes shares, debts and loans which: • are in a fund that is not a with-profits fund; and • would be in lines 21 to 24 of Form 13 for the long-term business if held at 31 December 2012. Regulations may include or exclude further descriptions.
138 – Meaning of assets that are 'matched to' liabilities	Defines whether the whole or part of an asset 'matched' in terms of the applicable (section 98) method and amounts of income on the asset being specifically referable.	'Specifically referable' requires the applicable method to be allocated to a specific business in consequence of a contractual requirement. (HMRC have previously indicated that PPFM is not a contractual requirement).
139 – Minor definitions	Defines various terms.	
140 – Abbreviations	126 Gives the meaning of 'FISMA 2000' and 'FISMA (Regulated Activities) Order 2001'.	Note that in this guide 'FSMA 2000' is used rather than 'FISMA 2000' except in direct quotations from the legislation.
141 – Index of defined terms, etc.	Gives an index for definitions in Part 2 and extends the definitions to other provisions of the Corporation Tax Acts in relation to long-term insurance.	
Chapter 12 Supplementary		
Powers conferred on Treasury or HMRC Commissioners		
142 – Power to amend Part 2 etc.	Gives a power to amend Part 2 and other provisions of the Corporation Tax Acts in relation to any category of life assurance business or long-term business carried on by insurance companies in consequence of changes under FSMA 2000.	May be exercised with retrospective effect but only so far as it matches the FSMA 2000 change.
143 – Power to amend definition of 'insurance business transfer scheme' etc.	Power similar to section 142 where the definition of 'insurance business transfer scheme' in section 105 of FSMA 2000 is amended.	May be exercised with retrospective effect but only so far as it matches the FSMA 2000 change.

Section	Purpose	Notes
144 – Power to modify provisions applying to overseas life insurance companies	Regulation–making power for overseas life insurance companies.	
145 – Orders and regulations	Orders and regulations are to be made by Statutory Instrument, subject to annulment procedure.	
Minor and consequential amendments and transitional provision		
146 – Minor and consequential amendments	Introduces Schedule 16.	Paragraph-by-paragraph guide to Schedule 16 not included.
147 – Transitional provision	Introduces Schedule 17.	Paragraph-by-paragraph guide to Schedule 17 not included.
Commencement etc.		
148 – Commencement	Commencement date is 1 January 2013.	This ended up as decoupled from Solvency II.
149 – Accounting periods straddling 1 January 2013	Accounting period ends on 31 December 2012 if it would not otherwise do so.	

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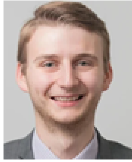

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