

Amendment	Page	Line
*121	378	29

Mr Chancellor of the Exchequer

### **Amendment 121**

Page 378, line 29 [*Schedule 33*], leave out sub-paragraph (6) and insert:-

‘(6) After subsection (6A) insert—

“(6B) A contract which reinsures risk in respect of insurances to be made only after the making of the contract of reinsurance can constitute a transfer of business by virtue of subsection (6)(c) above only if a potential advantage is conferred on the reinsurer by the contract.

(6C) And for the purposes of subsection (6B) above a potential advantage is conferred on the reinsurer by the contract if, taking the contract as the actual provision. for the purposes of Schedule 28AA to the Taxes Act 1988, the effect of making the actual provision instead of the arm’s length provision (within the meaning of that Schedule) would have in relation to the reinsurer the effect specified in paragraph 5(1)(b) of that Schedule.”.’.

## **EXPLANATORY NOTE**

### **SUMMARY**

1. This amendment changes the way paragraph 2 of Schedule 33 deals with “total reinsurance”, that is reinsurance of all the risks in a block of policies in a transaction akin to a transfer of insurance business.

### **DETAILS**

2. The amendment replaces paragraph 2(6) of Schedule 33, which in the Bill as published removed an exception for “pure reinsurers”,

companies whose only business is reinsurance with unconnected parties. Pure reinsurers will continue to be excepted from the provisions of section 83(3) Finance Act (“FA”) 1989 which reduces a company’s losses if an addition of funds is made in connection with a business transfer, including a total reinsurance.

3. In place of the original paragraph 2(6) of Schedule 33, a new sub-paragraph is inserted, which in turn inserts two new subsections into section 83 FA 1989.
4. New section 83(6B) and (6C) limits the occasions when a purely prospective reinsurance of business is counted as a total reinsurance. Paragraph 2(9) of Schedule 33 removed the previous exception for purely prospective contracts. A prospective-only contract will only count as total reinsurance if Schedule 28AA of the Income & Corporation Taxes Act 1988 would apply to the transaction to reduce the losses of the transferee on the assumption that the parties were within the ambit of that Schedule. Thus the transaction must be one whose terms disadvantage the reinsurer and increase (or create) losses that would not exist or would be smaller if the transaction was on arm’s length terms.

### **BACKGROUND NOTE**

5. Paragraph 2(6) and 2(9) of Schedule 33 make two changes to the definition of “total reinsurance” in section 83(3) Finance Act 1989. “Total reinsurance” is one class of “transfers of business” - and where there is a transfer of business coupled with an addition of assets to a company’s long-term insurance fund, losses of the transferee are reduced or extinguished by the amount of the asset addition.
6. Total reinsurance in current law covers the reinsurance of all or most of the risks in a block of policies unless all the policies are to be made after the making of the reinsurance contract or treaty. But it excludes cases where the reinsurer, the transferee, is a “pure reinsurer”, a company which only carries on reinsurance business and does so with any company that wishes to do business with it.
7. Paragraph 2(6) in the Bill as published removed the exclusion for pure reinsurers. Paragraph 2(9) removed the condition that prospective reinsurance is not caught. These responded to attempts

**BOARD OF INLAND REVENUE  
RESOLUTION 43**

**FINANCE BILL 2003  
REPORT  
SCHEDULE 33**

by insurance companies to exploit the exclusion for prospective policies.