

Amendment	Page	Line
*126	389	7
*127	389	34
*128	390	24

Mr Chancellor of the Exchequer

**Amendment 126**

Page **389**, line **7** [*Schedule 33*], leave out from “where” to “acquires” in line 9 and insert ‘, within a period of 10 days, an insurance company disposes of a number of section 440A securities and (whether subsequently or previously)’.

**Amendment 127**

Page **389**, line **34** [*Schedule 33*], leave out from ‘securities’ to ‘or’ in line 36 and insert ‘which are section 212 assets within the meaning of section 214(1) (rights under authorised unit trusts and interests in offshore funds),’.

**Amendment 128**

Page **390**, line **24** [*Schedule 33*], at end insert—

- ‘14A (1) Section 213 of the Taxation of Chargeable Gains Act 1992 (c. 12) (spreading of gains and losses under section 212) is amended as follows.
- (2) In subsection (3)-
    - (a) for “subsection (3A)” substitute “subsection (8H)”,
    - (b) in paragraph (b) for “one of the next 6” substitute “either of the next 2” and for “subsection” substitute “section”,
    - (c) in paragraph (c), for “any intervening accounting period” substitute “the intervening accounting period (if there is one)”, and
    - (d) in paragraph (ca), for “none of the intervening accounting periods is” substitute “the intervening accounting period (if there is one) is not”.
  - (3) Omit subsections (3A) and (3B).
  - (4) For subsection (5) substitute-

“(4A) The following provisions apply where an insurance business transfer scheme has effect to transfer business which consists of the effecting or carrying out of contracts of long-

term insurance from one person (“the transferor”) to another (“the transferee”).

(5) Subject to subsections (5A) to (7) below, any chargeable gain or allowable loss which (assuming that the transferor had continued to carry on the business transferred) would have accrued to the transferor by virtue of subsection (1) above after the transfer shall instead be deemed to accrue to the transferee.”

(5) After subsection (8) insert-

“(8A) Subsection (8B) below applies where.

- (a) immediately before the transfer the transferee did not carry on business consisting of the effecting or carrying out of contracts of long-term insurance,
- (b) the transferor and the transferee are, at the time of the transfer, members of the same group,
- (c) the net amount for the accounting period of the transferor ending with the day of the transfer, or for the immediately preceding accounting period of the transferor, (“the relevant pre-transfer period of the transferor”) represents an excess of gains over losses,
- (d) the net amount for the accounting period of the transferee in which the transfer takes place, or for the immediately following accounting period of the transferee, (“the relevant post-transfer period of the transferee”) represents an excess of losses over gains (after taking account of any reductions made by virtue of this section), and
- (e) within 2 years after the end of the relevant post-transfer period of the transferee, the transferor and the transferee make a joint election in respect of the whole or part of the net amount for that period by notice to an officer of the Board.

(8B) Subject to subsections (8C) to (8E) and (8H) below, the net amounts for both the relevant pre-transfer period of the transferor and the relevant post-transfer period of the transferee shall be reduced by the amount in respect of which the election is made.

(8C) Subsection (8B) above does not apply if-

- (a) the relevant post-transfer period of the transferee is the accounting period immediately following that in which the transfer takes place, and
- (b) the relevant pre-transfer period of the transferor is the accounting period immediately preceding that ending with the day of the transfer.

(8D) If-

- (a) the relevant post-transfer period of the transferee is the accounting period immediately following that in which the transfer takes place, and
- (b) the relevant pre-transfer period of the transferor is the accounting period ending with the day of the transfer, subsection (8B) above applies only if the conditions in subsection (8F) below are satisfied in relation to the accounting period of the transferee in which the transfer takes place.

(8E) If-

- (a) the relevant post-transfer period of the transferee is the accounting period in which the transfer takes place, and
- (b) the relevant pre-transfer period of the transferor is the accounting period immediately preceding that ending with the day of the transfer,

subsection (8B) above applies only if the conditions in subsection (8F) below are satisfied in relation to the accounting period of the transferor ending with the day of the transfer.

(8F) The conditions referred to in subsections (8D) and (8E) above are that-

- (a) there is (after taking account of any reductions made by virtue of this section) no net amount for the accounting period, and
- (b) the company whose accounting period it is did not join a group of companies in the accounting period.

(8G) A copy of the notice containing an election under subsection (8A)(e) above must accompany the tax return for the relevant post-transfer period of the transferee; and paragraphs 54 to 60 of Schedule 18 to the Finance Act

1998 (claims and elections for corporation tax purposes) do not apply to such an election.

(8H) Subsections (3) and (8A) and (8B) above have effect where the company, or the transferee, in question joins a group of companies in the accounting period for which the net amount represents an excess of losses over gains as if a claim or election could not be made in respect of that net amount except to the extent (if any) that the net amount is an amount which, assuming there to be gains accruing to the company or transferee immediately after the beginning of that period, would fall to be treated under paragraph 4 of Schedule 7AA as a qualifying loss in relation to those gains.

(8I) References in this section to a company joining a group of companies are to be construed in accordance with paragraph 1 of Schedule 7AA as if those references were contained in that Schedule; and in subsection (8A)(b) above “group” has the same meaning as in that Schedule.”

(6) This paragraph has effect where the accounting period for which the net amount represents an excess of losses over gains is an accounting period beginning on or after 1st January 2003.’.

## **EXPLANATORY NOTE**

### **SUMMARY**

1. These amendments modify the “bed and breakfast” rules introduced as paragraph 14 of Schedule 33 to the Bill, and insert a new paragraph 14A (carry back of certain allowable losses) as a consequence of changes to paragraph 14.

### **DETAILS**

2. Amendment 126 modifies section 210B(1) of the Taxation of Chargeable Gains Act 1992 (“TCGA”). Section 210B was inserted by paragraph 14 Schedule 33 to the Bill and applies bed and breakfast rules to companies carrying on life assurance business for the first time since 1990.

3. Unlike the bed and breakfast rules that apply to other companies, where there is a 30 day period for matching acquisitions and disposals, the intended period for section 210B was 10 days – which is the same period as applies generally for share identification purposes in section 107 TCGA and which does apply already to companies carrying on life assurance business.
4. But in the Bill as published, the period in section 210B(1) works out as 11 days. The amendment corrects this to 10 days, by following the wording of section 107 TCGA.
5. Amendment 127 also modifies new section 210B in subsection (6)(a). In the Bill as published there is an exception from the bed and breakfast rules for deemed disposals of holdings in unit trusts, open-ended investment companies (“OEICs”) and certain offshore funds (“section 212 assets”). These holdings are treated as disposed of at the end of each year for the market value, and then reacquired.
6. The amendment excludes all disposals of holdings in unit trusts, OEICs and offshore funds, whether on a deemed or an actual disposal.
7. Amendment 128 modifies the loss carry-back rules in section 213(3) TCGA and introduces a new relief under which a net amount of losses on section 212 assets accruing to a company can be carried back to a transferor of business to that company.
8. New paragraph 14A(1) Schedule 33 is introductory. New paragraph 14A(2) inserts amendments to section 213(3) TCGA. The number of accounting periods over which allowable losses may be carried back is reduced from 6 to 2. And amendments are made to accommodate the subsequent changes.
9. New paragraph 14A(3) and (4) prepare the ground for reordering, and reorder, existing material in section 213(3). New paragraph 14A(3) omits section 213(3A) and (3B) because they appear again in revised form as section 213(8H) and (8I). New paragraph 14A(4) splits section 213(5) into two and amends it without changing the substance. New section 213(4A) defines the parties to an insurance business transfer scheme as the transferor and the transferee.
10. New paragraph 14A(5) inserts 9 new subsections into section 213 to cater for carry back across an insurance business transfer.

11. New section 213(8A) gives the conditions for the transfer. They are that
  - the transferee is a newly established life assurance company which acquired its business from a transferor,
  - both were members of the same group of companies at the time of the transfer (this ensures that the loss and gain buying rules still have proper effect)
  - the transferee has a net amount of section 212 losses in either its first or second ever accounting period
  - the transferor has a net amount of gains on section 212 assets in either its last or penultimate accounting period before the transfer (it doesn't matter if the transferor carries on business after the transfer), and
  - a joint election is made within 2 years of the end of the transferee's loss period.
12. New section 213(8B) gives the operative rule. It reproduces section 213(3) and provides that the losses of the transferee extinguish an equal amount of gains of the transferor.
13. New section 213(8C) ensures that the 2 accounting period rule is observed by references to the 2 periods of both companies either side of the transfer.
14. New section 213(8D) to (8F) apply if there is an intervening period between the loss period and the gain period, whichever side of the transfer the intervening period falls. A loss can only jump an intervening period if there is neither a gain nor a loss on section 212 assets in that period (this echoes section 213(3)(c)) and ensures that losses are always set off against a later period before an earlier one) and the intervening period is not one in the relevant company joined a group (this echoes section 213(3)(ca)).
15. New section 213(8G) requires a copy of the election to be sent with the transferee's return, and disapplies the usual rules for elections in the CT Self Assessment regime. This follows the similar rules in section 444AD(3) Income and Corporation Taxes Act 1988 (inserted by paragraph 18 Schedule 33).

16. New section 213(8H) and (8I) reproduce section 213(3A) and (3B) which now apply to transfers of business carry backs as they apply to ordinary section 213(3) carry backs.
17. New paragraph 14A(6) gives the commencement rule – it applies to cases where there is a net loss on section 212 assets for accounting periods beginning on or after 1 January 2003. Thus a loss for such a period may only be carried back to cover net gains on section 212 assets in the 2 accounting periods immediately preceding the period of loss.

### **BACKGROUND NOTE**

18. “Bed and breakfasting” is the practice of selling assets standing at loss by reference to their cost on one day and buying them back the next day, in order to generate an allowable loss for the purposes of the capital gains rules in the Taxation of Chargeable Gains Act 1992 (“TCGA”).
19. Section 106 TCGA, originally enacted in 1975, contains rules which prevent companies from bed and breakfasting. Before 1990 they applied to companies carrying on life assurance business, but they only applied where the holdings in the shares was more than 2% of the issued share capital.
20. Paragraph 14 Schedule 33 restores bed and breakfasting rules for companies carrying on life assurance business.
21. Section 213 TCGA 1992 sets out the rules for taxing gains and relieving losses of life assurance companies in respect of their holdings in unit trusts and OEICs. All such holdings (except those in bond funds) are treated as disposed of at the end of each accounting period at their market value and then reacquired. This is to prevent life assurance companies exploiting the tax exemption for chargeable gains applying to unit trusts and OEICs to shelter gains on the life company’s portfolios of equities. The gains and losses from the deemed disposal are aggregated and the net amount spread forward over 7 years.

**BOARD OF INLAND REVENUE  
RESOLUTION 43**

**FINANCE BILL 2003  
REPORT  
SCHEDULE 33**

22. Alternatively if there is a net loss, it can currently be carried back up to 6 accounting periods before the loss period and set against gains on section 212 assets.