

**BOARD OF INLAND REVENUE
RESOLUTION 43**

**FINANCE BILL 2003
COMMITTEE
SCHEDULE 33**

Amendment	Page	Line
*SC 163	377	2
*SC 165	389	45

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(Brent South - Lab)

Amendment 163

Schedule 33, page 377, line 2, at end insert—

‘(2E) If subsection (2B) above applies in relation to the transfer of all the assets of the company’s long term insurance fund in accordance with—

(a) an insurance business transfer scheme, or

(b) a scheme which would be such a scheme but for section 105(1)(b) of the Financial Services and Markets Act 2000 (which requires the business transferred to be carried on in an EEA State),

the reference in that subsection to an amount being deemed to be brought into account for the period of account in which the transfer takes place is to its being so deemed for the period of account ending immediately before the transfer takes place.’.

Amendment 165

Schedule 33, page 389, line 45, leave out ‘the purposes of corporation tax’ and insert ‘all purposes of corporation tax other than determining for the purposes of section 83(2B) of the Finance Act 1989 whether a transfer is brought into account as part of total expenditure.’.

EXPLANATORY NOTE

SUMMARY

1. These amendments ensure that there is an appropriate tax charge under section 83(2B) FA 1989 where a company transfers all of its long-term insurance business to another company.

DETAILS

2. Section 83(2B) Finance Act 1989 (inserted by Schedule 33 to the Bill) imposes a tax charge where life assurance companies have sought to reduce their profits or create a loss by not charging expenditure through their revenue account and by not bringing changes in the value of their assets into account at all when they transfer their business.
3. As drafted the section would apply to a transfer of untaxed assets on a transfer of business only if there is a “period of account” in which the transfer takes place.
4. Another provision in Schedule 33, the new section 444AA of the Taxes Act 1988, ensures that a period of account always ends immediately before such a transfer of business. This is to stop companies manipulating their tax results by not filing a regulatory return at all for the period covered by the transfer, or filing one for a period ending a second after a transfer . As a result there will not be a period of account that covers the actual moment of the transfer.
5. The amendments ensure that the tax charge imposed by section 83(2B) in transfer cases does apply by deeming the transfer of assets to take place in the period of account immediately before the transfer.

BACKGROUND NOTE

6. A life assurance company’s trading profits (Case I profits) are calculated on a basis that follows the company’s regulatory return to the FSA and in particular the revenue account in that return. It is a feature of some companies that they are able to determine exactly how much by way of taxable receipts they need to recognise - and the amount depends on how much expenditure is charge in the revenue account.
7. This system works reasonably well over the life of a company. But some companies have sought to argue that by transferring their business to another one (perhaps in the same group) they can avoid ever bringing into account the accumulated changes in value of assets that they have not needed to recognise.

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8. Section 83(2B) FA 1989 is designed among other things to stop this, by bringing any transfer of untaxed assets into account at the time of the transfer.
9. But section 83(2B) operates by reference to transfers made in a “period of account”. In the case of a life assurance company that has a specialised meaning, and denotes the period for which a regulatory return to the FSA is drawn up. But when a company transfers its entire business, the FSA may waive the requirement to make a return or the company may make a return for a period ending after the transfer. This can impede the working of the rules for life assurance company taxation, and so new section 444AA ICTA 1988 treats there as always being a deemed period of account ending just before the transfer.