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Mr Chancellor of the Exchequer

**Amendment 122**

Page 381, line 11 [*Schedule 33*], at end insert—

“(15) The references in subsections (8), (12) and (13) above to an amount being brought into account—

(a) in a case where the amount taken into account as a receipt of the company under section 83(2) above in relation to the contingent loan or loans in question is an amount brought into account in an account concerned wholly with non-participating business, are to its being brought into account in that account or in any other account concerned wholly with non- participating business, and

(b) in a case where the amount so taken into account is an amount brought into account in an account concerned wholly or partly with participating business, are to its being brought into account in that account or in any other account concerned wholly or partly with participating business.

(16) Where.

(a) a transfer to another fund brought into account for a period of account as other expenditure in any account concerned wholly with non-participating business is brought into account as other income in an account concerned wholly or partly with participating business, or

(b) a transfer to another fund brought into account for a period of account as other expenditure in any account concerned wholly or partly with participating business is brought into account as other income in an account concerned wholly with non-participating business,

subsection (8) above has effect as if it were a positive amount brought into account as transfers to non-technical account for that period of account in the account in which it is brought into account as other expenditure.

- (17) For the purposes of subsections (15) and (16) above—
- (a) an account is concerned wholly with non-participating business if it relates exclusively to policies or contracts under which the policy holders or annuitants are not eligible to participate in surplus, and
  - (b) an account is concerned wholly or partly with participating business if it relates wholly or partly to other policies or contracts.”.’.

**Amendment 124**

Page **384**, line **4** [*Schedule 33*], at end insert:-

- ‘8A (1) In section 432D of the Taxes Act 1988 (section 432B apportionment: value of non-participating funds), after “value of assets” (in each place) insert “or as other income”.
- (2) Sub-paragraph (1) has effect for periods of account beginning on or after 1st January 2003.’.

**EXPLANATORY NOTE**

**SUMMARY**

1. Amendment 122 modifies the new section 83ZA Finance Act (“FA”) 1989 inserted by paragraph 3 Schedule 33 to the Bill. That section gives a new and comprehensive scheme for dealing with “contingent loans” received and repaid by a company carrying on life assurance business (“life company”). The second amendment ensures that contingent loans and other types of “other income” are apportioned correctly between categories of business.

**DETAILS**

2. New section 83ZA provides that where a loan is brought into account by a life company in its revenue account (a “contingent loan”), a deduction is permitted from this amount for the amount of the loan that remains unrepaid at the end of the period. But if there is a transfer of profit to shareholders at any time since the loan was made, that transfer reduces the deduction for unrepaid amounts.

3. When the loan is repaid, in whole or part, a further amount is brought into account, but a deduction may be given against that amount for the repayment.
4. In a case where a company is required to prepare separate revenue accounts for separate parts of its business by section 83A(3) FA 1989, both these rules only apply where the transfer to shareholders, or the repayment of the loan, is reflected in the same separate revenue account.
5. In order to give protection to the Exchequer, and to give relief for companies, new section 83ZA(15) allows transfers and repayments made from a different separate account to be taken into account, but with the proviso that the separate account is of the same type (either “participating”, i.e. with-profits or non-participating) as the one in which the loan was received.
6. New section 83ZA(16) prevents the reduction of relief for shareholder distributions being side stepped by the device of making a transfer of assets from one separate account to another of a different type, and then making a shareholder distribution from the recipient account. It treats “transfers to another fund” as brought into account as other expenditure of the paying fund and as other income of the recipient fund (as required by Instruction 4 to Form 40 in Appendix 9.3 of the FSA’s Interim Prudential Sourcebook – Insurers) as if it were a transfer to shareholders by the paying fund.
7. New section 83ZA(17) defines what is meant by the different types of separate account, based on the definitions in section 432B Income and Corporation Taxes Act 1988 (“ICTA”).
8. New paragraph 8A Schedule 33 to the Bill inserts the words “or as other income” in three places in section 432D ICTA. Section 432C and 432D between them provide the apportionment rules where investment return needs to be divided between categories of business which have separate tax treatments. They apply where the relevant separate account is one concerned with non-participating business only (see paragraph 5 above). Section 432C applies to investment income only, while section 432D applies to value increases and decreases of assets. Now that new section 83(2)(d) FA 1989 (inserted by paragraph 2 Schedule 33) takes all “other income” into account for tax purposes if it is brought into account in the revenue account, there needs to be a rule to apportion this other income. Section 432D is more appropriate

that section 432C as it avoids problems where a company carried on overseas life assurance business.

### **BACKGROUND NOTE**

9. “Contingent loans” are loans and other deposits made to an insurance company by a bank, a reinsurance company or another group company, a typical feature of which is that repayment of the loan only happens if the company has generated a predetermined level of profit.
10. Because this condition is present, the company will value the loan at nil in its regulatory return made to the Financial Services Authority, but will value the assets acquired with the loan at their full market value. In this way the solvency margin of the company is increased.
11. These loans are more flexible than other forms of capital funding, which may not easily be repaid.