

**BOARD OF INLAND REVENUE
RESOLUTION 32**

**FINANCE BILL 2004
COMMITTEE
CLAUSE 47 &
SCHEDULE 7**

Amendment	Page	Line
*SC 86	281	42
*SC 87	282	32

Paul Boateng

(Brent South - Lab)

Amendment 86

Schedule 7, page **281**, line **42**, after first ‘14’ insert ‘, 17, 22, 31 or 38’.

Paul Boateng

(Brent South - Lab)

Amendment 87

Schedule 7, page **282**, line **32**, at end insert—

‘(7) Where an amount is shown as post-transfer reduction liabilities in the transferor’s accounts for any accounting period beginning after the transfer, this section applies as if the amount of the retained liabilities at the end of that accounting period (and the beginning of the next) were increased by the amount so shown.

(8) In subsection (7) “post-transfer reduction liabilities” means liabilities of the transferor to make payments to relevant persons which, in accordance with the terms of the insurance business transfer scheme, have arisen in consequence of a reduction in the amount of the retained liabilities at any time after the transfer.

(9) In subsection (8) “relevant persons” means—

- (a) if the transferor’s life assurance business immediately before the transfer was mutual business, persons who were policy holders or annuitants, or members of the transferor, at that time, and
- (b) in any other case, persons who were policy holders or annuitants at that time.”’.

EXPLANATORY NOTE

SUMMARY

1. These two amendments ensure that all relevant liabilities of company which has transferred all its life assurance business are taken into account in determining whether and to what extent an anti-avoidance rule introduced in Finance Act 2003 applies, and to the extent it does not, whether subsequent changes in its liabilities trigger the rule.

DETAILS

2. The first amendment affects the way that the anti-avoidance rule in section 444AB Income & Corporation Taxes Act 1988 (ICTA) is disapplied where a company retains some liabilities as well as assets when it transfers business.
3. Originally the rule imposed a charge to tax if a company retained assets, whether or not it retained liabilities. Paragraph 2 of Schedule 7 to the Finance Bill tempers this rule by allowing liabilities to be taken into account if they appear at line 14 of Form 14 (liabilities to policy holders) in the company's periodical return to the Financial Services Authority.
4. It now appears that some companies may also retain liabilities which will appear at different lines in Form 14 but which are also liabilities to policy holders or otherwise appropriate to be taken into account. The amendment adds four other lines in Form 14 to the definition of "retained liabilities".
5. The second amendment applies where there are retained liabilities and at some time after the transfer of business the amount of the retained liabilities reduces, not because the liabilities are paid, but simply because they are revalued. The new section 444ABA ICTA inserted by paragraph 3 Schedule 7 to the Finance Bill imposes a charge where there is a reduction in liabilities of this sort.

6. But if a company has been required by the terms of its transfer scheme approved by the Court to pay any surplus of retained assets to those who used to be its policy holders, it is appropriate that the charge to tax be reduced. This is because the new liabilities to policy holders take the place of the previously overestimated liabilities.
7. The amendment inserts three new subsections into section 444ABA. It applies to measure the amount of retained liabilities at the end of a period, and provides that if, as a consequence of the transfer scheme, the company acknowledges a liability to its policyholders arising from the reduction in retained liabilities, the new liabilities will be added to the retained liabilities for the purposes of determining whether the tax charge arises.
8. The new liabilities must be shown in the company's accounts (either in the balance sheet or as a contingent liability in the Notes to the accounts), and the amount shown in those accounts will be used as the value of those liabilities. The new liabilities must be due to persons who were policy holders of the company at the time it transferred its business, or, in the case of a mutual company, members. This last point is necessary because in some mutuals not all members are policy holders and vice versa.

BACKGROUND NOTE

9. Paragraphs 2 and 3 of Schedule 7 to the Finance Bill make some changes to section 444AB ICTA. This section was inserted by FA 2003 and imposes a charge to tax where a company ceases entirely to carry on life assurance business as a result of a transfer of business. Where this happens and assets are retained by the transferor which represent untaxed profits in the hands of the transferor, section 444AB imposes a charge to tax on the amount of the retained assets (subject to certain limits).
10. But there may be circumstances in which for proper commercial and regulatory reasons the transferor retains some liabilities which it owes to its policy holders, but without the company still being regarded as carrying on insurance business. It will of necessity need to retain assets to enable it to meet these liabilities as they fall due. Paragraphs 2 and 3 take this situation into account.