

EXPLANATORY NOTE

**CLAUSE 40 SCHEDULE 17: LIFE ASSURANCE
COMPANIES ETC: AMENDMENT 33**

SUMMARY

1. This amendment keeps specific life assurance companies outside the changes made by paragraph 36 of Schedule 17 to the Finance Bill, where they have litigation on foot as at 15 May 2008.

DETAILS OF THE CLAUSE

2. Amendment 33 inserts two further paragraphs into paragraph 36. New sub-paragraph (3) prevent the amendment made by paragraph 36(1) and (2) from having any effect in relation to a company if a relevant determination has been made by a Court in litigation that began before 15 May 2008 (the date that paragraph 36 has effect from).
3. New sub-paragraph (4) explains what a relevant determination is. It is a judgment of a Court that is final and allows the company to use its pre-2002 losses against profits for periods between 2003 and 2006.

4. It is only in these periods that the provision the subject of the litigation has effect, as it was accidentally repealed from 1 January 2007.

BACKGROUND NOTE

5. Paragraph 36 of Schedule 17 to the Finance Bill corrects an accidental repeal made by Finance Act 2007. But it was not possible simply to deem the repeal not to have been made, and so the restored rule took a different approach from the repealed provision.
6. In 2007 the Special Commissioners, a tax tribunal hearing appeals against tax assessments, gave a decision about the legislation that was accidentally repealed in FA 2007. In that decision the Special Commissioners held that the repealed paragraph was effective to prevent the company using losses which it made before 2002 against profits of 2003 and later years. The company has appealed against that decision to the High Court, and the case (*Sun Life Assurance Co of Canada (UK) Ltd v HM Revenue & Customs*) is scheduled for a hearing in the autumn.
7. If the company were to win in the High Court, or on further appeal if any, and overturn the decision of the Special Commissioners the effect, had the accidental repeal not happened, would be to allow the company

to use its pre-2002 losses against profits of all years from 2003 to 2008 and later.

8. But paragraph 36 restoring the repealed provisions would not be affected by any Court decision, as the wording and approach are different and it is not the legislation in dispute. So if Sun Life won its appeal, they would be prevented from getting relief against 2008 profits (They will in any event be able to use pre-2002 losses against 2007 as the restoration is not retrospective).
9. This amendment permits the company to use any losses that Courts say are available in 2008 and later.