Market Bulletin

LLOYD'S

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FROM:	Head of Taxation
LOCATION:	TAX/G4/441
EXTENSION:	5228
DATE:	14 April 2004
REFERENCE:	TAX/DHC/Y3292
SUBJECT:	**FINANCE BILL 2004: TAX RELIEF FOR CONVERTING LLOYD'S NAMES**
ATTACHMENTS:	None
ACTION POINTS:	To note
DEADLINE:	None

1. Introduction

1.1 Finance Bill 2004, which was published on 8 April, contains legislation to give tax reliefs to individual members of Lloyd's who convert to limited liability underwriting. These reliefs will remove certain tax barriers to conversion. They will allow the carry forward of unused tax losses on conversion to a NameCo or a Scottish Limited Partnership (SLP); and will also allow the deferral of capital gains tax charges that may arise on the transfer of assets to a NameCo.

1.2 The legislation will apply to conversions to a corporate member that the individual controls; and to conversions to an SLP where the individual is entitled to more than 50% of the profits. Certain other conditions also need to be met. Other conversion vehicles are not, however, within the scope of the legislation.

1.3 The Finance Bill will be considered by Parliament, and the legislation that is currently in Clause 134 and Schedule 25 of the Bill is not final until that process has been completed. Once it is, the provisions should have effect from 6 April 2004.

1.4 The remainder of this bulletin summarises the proposed provisions in some more detail, although it does not give an exhaustive description. It covers the following subjects:

(a) the carry forward of tax losses on conversion to a NameCo;
(b) capital gains tax relief on the transfer of syndicate capacity to a NameCo;
(c) capital gains tax relief on the transfer of Funds At Lloyd's assets to a NameCo;
(d) the carry forward of tax losses on conversion to an SLP.

2. *Carry forward of tax losses on conversion to a NameCo*

2.1 This provision will apply when an individual member converts to underwriting through a NameCo on or after 6 April 2004. The individual must cease underwriting new business and must give notice of resignation so that he or she becomes a non-underwriting member of Lloyd's.

2.2 A further condition is that there must be a transfer of capacity to a corporate member under a conversion arrangement solely in consideration of the issue of shares in that company to the individual. The individual must control the company and must hold more than 50% of the ordinary share capital in it.

2.3 For as long as the individual continues to control the corporate member and holds more than 50% of its ordinary share capital, any unused trading tax losses that are carried forward from his or her individual underwriting may be set against any income that he or she derives from the corporate member. This includes any salary or dividends that he or she derives from the company.

2.4 For conversions that take place on or after 6 April 2004, the ability to carry forward losses against income derived from the corporate member is operative with immediate effect. Although the individual must cease underwriting new business going forward, there is no requirement that the individual's underwriting trade must have ceased before a carried forward loss can be set against income that is derived from the corporate member.

2.5 The operation of the loss carry forward relief is based on the provisions of section 386 ICTA 1988.

3. *Capital gains tax relief on the transfer of syndicate capacity to a NameCo*

3.1 When an individual member converts to underwriting through a NameCo, an aggregate capital gain or loss will arise on the disposal of syndicate capacity to the NameCo.

3.2 Provided the conditions (including those described in paragraphs 2.1 and 2.2 above) are met, the legislation will allow the individual to elect to "roll over" an aggregate capital gain against the acquisition cost of the shares that are issued in consideration for the capacity. If the individual chooses to make such an election, it will have the effect of deferring the capital gain until the shares are disposed of for tax purposes.

3.3 This relief will apply to conversions on or after 6 April 2004. It is modelled on section 162 TCGA 1992.

4. *Capital gains tax relief on the transfer of Funds At Lloyd's assets to a NameCo*

4.1 This relief will apply to all NameCo conversions that meet the specified conditions, including conversions that took place before 6 April 2004. Its purpose is to allow an individual to elect to defer an aggregate capital gains that arises on the transfer to a corporate member, on or after 6 April 2004, of assets that were held in his or her Funds At Lloyd's. The transfer must be made wholly in consideration of the issue of shares in the company to the individual, and the individual must control the company and hold more than 50% of its ordinary share capital.

4.2 It is intended that this relief should be available where, for example, an individual who has converted and who has made his or her Funds At Lloyd's interavailable wishes, at the end of the interavailable period and upon release of the interavailable Funds At Lloyd's, to transfer the assets to the NameCo. The transfer to the NameCo must take place without unreasonable delay after the release of the assets in question from the individual's Funds At Lloyd's.

4.3 There is a limit on the amount of assets that benefit from this relief. This is set by reference to the lesser of the Funds At Lloyd's required for the individual's final year of underwriting and Funds at Lloyd's required for the NameCo's first year of underwriting.

4.4 Provided the conditions are met, the legislation will allow the individual to elect to "roll over" the aggregate capital gain on the assets against the acquisition cost of the shares that are issued in consideration for them. It will operate in a similar way to the relief on syndicate capacity described above, by deferring the capital gain until the shares are disposed of for tax purposes.

4.5 An election for this relief cannot, however, be made if the individual could have elected for the same relief on syndicate capacity but did not do so. This restriction will only be of practical application to conversions that take place on or after 6 April 2004 where there was an aggregate capital gain on the syndicate capacity but where the individual chose not to elect for roll-over relief in respect of that capacity.

4.6 The relief applies to disposals of assets on or after 6 April 2004, irrespective of the date of conversion.

5. Carry forward of tax losses on conversion to an SLP

5.1 This legislation will allow a carry forward of tax losses on conversion to an SLP on or after 6 April 2004, provided the individual is the only member who converts to the SLP and provided the individual is entitled to more than 50% of the profits of the SLP. There is no capital gains tax provision relating to SLP conversions, as this is not currently thought to pose a barrier.

5.2 As with the loss carry forward provision on conversion to a NameCo, the SLP loss carry forward provision will require the individual to cease underwriting new business and to give notice of resignation so that he or she becomes a non-underwriting member of Lloyd's. There is also a requirement that there must be a transfer of syndicate capacity to the SLP under a conversion arrangement.

5.3 For as long as the individual continues to be entitled to more than 50% of the profits of the SLP, he or she can set any unused trading tax losses that are carried forward from his or her individual underwriting any profits that he or she derives from the SLP.

5.4 For conversions that take place on or after 6 April 2004, the ability to carry forward losses against SLP profits is operative with immediate effect. Although the individual must cease underwriting new business going forward, there is no requirement that the individual's underwriting trade must have ceased before a carried forward loss can be set against his or her SLP profits.

6. General provisions

6.1 The above reliefs are dependent on an individual's having given notice of resignation from Lloyd's. An individual who claims relief and subsequently withdraws his or her notice of resignation must inform the Inland Revenue accordingly so the tax relief can be withdrawn.

7. Readership and contact details

7.1 This bulletin is being sent to all underwriting agents, recognised auditors, personal accountants and individual members who deal with their own tax affairs.

7.2 If you have any questions, please contact

Juliet Phillips on 020 7327 6839 email: juliet.phillips@lloyds.com ;or
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