

FROM: Head of Taxation, Taxation Department
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SUBJECT: CORPORATION TAX TREATMENT OF SYNDICATE
CAPACITY
ACTION POINTS: For information

1. Introduction

1.1 The corporation tax consequences of transferring syndicate capacity within a group of companies have been a matter of contention for some time. The Inland Revenue has now revised its view of what those consequences are. This bulletin:

(a) sets out the Inland Revenue's new view of the correct tax treatment under current law; and

(b) as a separate matter, notes proposals which are currently under consideration to reform the taxation of corporate capacity in the future.

2. Revised view of intra-group transfers under current law

2.1 Up until now the Inland Revenue's view has been that an intra-group transfer of syndicate capacity results, for tax purposes, in a disposal of a trading asset at its market value. This has meant that some groups were faced with significant potential tax bills if they decided to consolidate their underwriting into one corporate member. Lloyd's has in the past made representations that this tax impediment should be removed.

2.2 The Inland Revenue has now reconsidered the legal position and has changed its view of the correct tax treatment. It still believes that an intra-group transfer gives rise to a disposal of a trading asset, but now considers that the disposal value for tax purposes should follow the accounting treatment, provided this treatment does not conflict with normal accountancy practice.

- 2.3 This means that, if capacity is transferred within a group at net book value, the taxable profit or loss for the transferring company that results from the disposal will be calculated by deducting its acquisition cost from its net book value at the time of the transfer. The acquiring company will be treated as acquiring the capacity at the same transfer value.
- 2.4 This new view should be helpful to corporate members. The Inland Revenue will apply it to all intra-group transfers that have taken place to date where the tax computation is not yet settled, and to all future intra-group transfers unless and until there is a change in the law (see below).

3. Proposals to reform the future taxation of corporate capacity

- 3.1 The Government has proposed, and is consulting on, a wide-ranging reform of the corporation tax regime for intellectual property and similar assets. The process is not complete, but it is hoped there will be legislation in next year's Finance Act.
- 3.2 As syndicate capacity is within the general category of assets under consideration the Government is proposing to include it in the new regime. Assets within this regime would give rise to trading profits or losses for tax purposes rather than capital gains. It is proposed that the tax consequences will essentially follow the accounting treatment, provided this does not conflict with normal accountancy practice.
- 3.3 There would be two main differences between the proposed regime and the treatment the Inland Revenue currently applies to capacity. First, under the proposed regime an intra-group transfer would no longer be a disposal for tax purposes. Second, companies would be able to claim amortisation of capacity as a deduction in calculating trading profits so long as the amortisation charged in the accounts does not conflict with normal accountancy practice.
- 3.4 Lloyd's has welcomed the proposals as bringing certainty and clarity to the tax treatment of capacity. We have asked that the proposed regime should not only apply to capacity acquired after the new legislation comes into force but also to capacity held before then. If so, there may be transitional rules for such existing capacity. We will keep you informed of developments.

4. Readership and contact details

- 4.1 This bulletin, which has been agreed with the Inland Revenue, is being sent to all underwriting agents, direct corporate members and recognised auditors. If you have any queries please contact Helen Hope on 020 7327 6839.

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