

MARKET BULLETIN

From Senior Tax Manager, Taxation (extn 6839)

Date 7 November 2005

Reference Y3664

Subject **UK Tax – Syndicate Tax Returns**

Subject areas Proposed changes to the rules for making syndicate tax returns

Attachments Annexes 1 and 2

Action points Give any comments by deadline

Deadlines 18 November 2005

As provided for by this year's Finance (No 2) Act, HM Revenue & Customs is proposing to make new Regulations governing the making of syndicate tax returns and the determination of the taxable results which are then apportioned to the members of each syndicate. Their stated intention is to modernise, but not to substantially change, the existing rules.

Annexes 1 and 2 contain a letter from HMRC enclosing draft Regulations that they intend to make within the coming month and summarising the main changes from the current rules that are in Schedule 19 Finance Act 1993. HMRC will welcome comments from any interested parties, which can either be channelled through Lloyd's or sent directly. If you have any comments, representations or requests for clarification that you would like to make, please send them to Juliet Phillips (contact details below) by 18 November 2005.

This bulletin is being issued to managing agents, members' agents, recognised auditors and direct corporate members. If you have any questions on it, please contact:

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Date 26 October 2005

Our Ref
Your Ref

Dear David

Replacement of Schedule 19 FA 1993

As you know, section 45 of Finance (No.2) Act 2005 allows for the replacement of Schedule 19 FA 1993 by new regulations. We hope to have these regulations finalised in time for the start of the 2006 underwriting year. I have sent you a draft of the proposed Statutory Instrument. There are still some details to be filled in, but I thought it would be helpful to summarise the key points of the new regulations.

Broadly speaking, they reproduce the rules currently set out in Schedule 19 of FA 1993 (Lloyd's Underwriters: Assessment and collection of Tax), and consolidate some of the material in the Lloyd's Underwriters (Tax) Regulations 1995 (SI 1995/351). The main differences between Schedule 19 and the new regulations are as follows:

- HMRC can issue a notice to make a return at any point after the end of the underwriting year, rather than as now, after the start of the tax year. There will be no need for HMRC to wait until after 6 April 2006 to issue a notice in respect of underwriting years closing, or in run-off, at 31 December 2005.
- The managing agent's return will constitute a determination of the syndicate's profit or loss. In the majority of cases, where there is no enquiry into the return, there will be no need for any further correspondence between the managing agent and HMRC. The new procedures will, therefore, be a 'self-determination' system, rather like the self-

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assessment system that has applied for many years to tax returns made by individuals and companies.

- The filing date for the return will be 1 July rather than 1 September. HMRC will then have until 31 December to begin an enquiry into the return. The normal rules on company enquiries in Schedule 18 FA 1998, suitably adapted, will apply to an enquiry into the syndicate return. The filing date and enquiry time limits should allow Lloyd's MSU to carry out the apportionment of profits and losses, and distribution of tax advices to members, to essentially the same timescale as currently applies.
- Managing agents will be allowed (but not required) to make the syndicate returns by electronic means. The precise details of these arrangements will be worked out directly between managing agents and the Large Business Service.

The regulations are intended to modernise, but not substantially change, the current procedures, and to make it easier to adapt the machinery in response to future developments in the Lloyd's market. The new rules will involve fewer exchanges of paper between managing agents and HMRC and will therefore be a little simpler to operate than the Schedule 19 machinery. Other than the earlier filing date, managing agents should notice little difference to the existing arrangements.

Yours sincerely

Tony Sadler

Policy and Technical Adviser (Insurance Group)

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PART 1

General

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Lloyd’s Underwriters (Tax) Regulations 2005 and shall come into force on 2005.

(2) These Regulations shall have effect—

- (a) in their application to members who are individuals, for the year 2006-07 and subsequent years of assessment; and
- (b) in their application to corporate members, for accounting periods beginning after 31st December 2005.

Interpretation

2. In these Regulations—

“the Management Act” means the Taxes Management Act 1970;

“notice” has the meaning in section 832(1) of the Taxes Act;

“Schedule 18” means Schedule 18 to the Finance Act 1998;

“the Taxes Act” means the Income and Corporation Taxes Act 1988;

and expressions which are defined in Chapter 3 of Part 2 to the Finance Act 1993 have those defined meanings.

PART 2

Determination of a syndicate’s profit or loss

Preliminary

3. In this Part of these Regulations “profit or loss”, in relation to a syndicate, means the aggregate amount of such of the profits or losses of all the members of the syndicate (taken together) as arise—

- (a) directly from their membership of the syndicate, or
- (b) from assets forming part of premium trust funds,

and “profits” and “losses” shall be construed accordingly.

Returns by managing agent

4.—(1) An officer of Revenue and Customs may, by notice to a syndicate’s managing agent, require him to deliver a return (a “syndicate return”) of the syndicate’s profit or loss for an underwriting year (the amount of that profit or loss being referred to as a “syndicate determination”).

- (2) A notice under paragraph (1) may be given—
- (a) at any time after the closing year for the underwriting year in question; and
 - (b) more than once [(in particular,] where the syndicate continues after the end of its closing year).
- (3) The return shall—
- (a) contain such information as may reasonably be required by the notice; and
 - (b) be accompanied by such accounts, statements and reports as may reasonably be so required.
- (4) The filing date for any syndicate return required by a notice under paragraph (1) is whichever is the later of—
- (a) [1st July] in the underwriting year next following that closing year; and
 - (b) the end of the period of three months beginning on the day following that on which the notice was served.
- (5) If a syndicate’s managing agent, having been required by a notice under paragraph (1) to deliver a return, fails to deliver the return on or before the filing date, he shall be liable to a flat-rate penalty equal to the prescribed amount multiplied by the number of days on which the failure continues.
- (6) In paragraph (5) “the prescribed amount” means £60 for each £10m. of [overall premium limit for the syndicate] (counting any such limit less than £10m, and any such limit left over, as £10m.).
- (7) If a syndicate’s managing agent fraudulently or negligently delivers an incorrect return under paragraph (1), he shall be liable to a penalty not exceeding £3,000 multiplied by [].
- (8) In relation to a return required by a notice under paragraph (1)—
- (a) any reference in paragraph (4) or (5) to the filing date for, or delivery of, a return is a reference to its delivery together with the accompanying documents referred to in paragraph (3)(b); and
 - (b) the reference in paragraph (7) to the return being incorrect includes a reference to any of those documents being incorrect.

Amendment of syndicate determinations and HMRC enquiries

5.—(1) In relation to both members who are individuals and corporate members, the like provisions as are contained in paragraphs 15, 16, 24, 25, and 27 to 34 of Schedule 18 shall apply with the modifications in paragraphs (2) to (6).

- (2) For references to—
- (a) the company substitute references to the syndicate’s managing agent;
 - (b) the company tax return substitute references to the syndicate return;
 - (c) the company’s self-assessment or tax payable, substitute references to the syndicate determination; and
 - (d) the Inland Revenue substitute references to Her Majesty’s Revenue and Customs.
- (3) In paragraph 15(4) for [“twelve” substitute “six”].
- (4) In paragraph 16(3) for [“nine” substitute “three”].
- (5) In paragraph 24 [for “twelve” substitute “six”].
- (6) Omit paragraphs 32(2) and (3) and 34(1)(a)(ii), (2)(a)(ii) and (5).
- (7) The giving of a notice of enquiry to a syndicate’s managing agent under the like provisions as are contained in paragraph 24 of Schedule 18 shall be deemed to include the giving of notice of enquiry—

- (a) under section 9A(1) of the Management Act to each member of the syndicate who is an individual, and who at that time has made a return under section 8 or 8A of that Act or at any subsequent time makes such a return; and
- (b) under paragraph 24 of Schedule 18 to each member of the syndicate who at that time has made a company tax return or at any subsequent time makes such a return.

HMRC determinations

6.—(1) In relation to both members who are individuals and corporate members, the like provisions as are contained in paragraphs 36 and 40 of Schedule 18 shall apply with the modifications in paragraphs (2) and (3).

(2) For references to—

- (a) the company substitute references to the syndicate’s managing agent;
- (b) the company tax return substitute references to the syndicate return;
- (c) the company’s self-assessment or tax payable, substitute references to the syndicate determination;
- (d) an accounting period (or periods) substitute references to the underwriting year to which the syndicate return relates (or would relate); and
- (e) the Inland Revenue substitute references to Her Majesty’s Revenue and Customs.

(3) Omit paragraphs 36(3) and (6)(a) and 40(1)(b) and (2).

Discovery determinations

7.—(1) In relation to both members who are individuals and corporate members, the like provisions as are contained in paragraphs 41(2) to 44 and 46 to 49 of Schedule 18 (as they apply to discovery determinations) shall apply with the modifications in paragraphs (2) and (3).

(2) Except in paragraph 49 of Schedule 18, for references to—

- (a) the company substitute references to the syndicate’s managing agent;
- (b) the company tax return substitute references to the syndicate return;
- (c) the company’s self-assessment or tax payable, substitute references to the syndicate determination;
- (d) an accounting period (or periods) substitute references to the underwriting year to which the syndicate return relates (or would relate); and
- (e) the Inland Revenue substitute references to Her Majesty’s Revenue and Customs.

(3) In paragraph 41(2) of Schedule 18, omit—

- (a) “for another accounting period” in paragraph (a), and
- (b) paragraph (b).

Relief in case of mistake in syndicate return

8.—(1) In relation to both members who are individuals and corporate members, the like provisions as are contained in paragraph 51 of Schedule 18 shall apply with the modifications in paragraph (2).

(2) For references to—

- (a) the company substitute references to the syndicate’s managing agent;
- (b) the payment of tax, an assessment or the profits of the company for corporation tax purposes substitute references to the syndicate determination;
- (c) the liability of the claimant or claimant company, treat them as including references to the liability of the members of the syndicate;

- (d) an accounting period (or periods) substitute references to the underwriting year to which the syndicate return relates (or would relate); and
- (e) the Inland Revenue substitute references to Her Majesty's Revenue and Customs.

Apportionments of syndicate's profit or loss

9.—(1) Where a determination of a syndicate's profit or loss for an underwriting year is made, amended or corrected (whether under the foregoing provisions of these Regulations or on appeal), the officer may, by notice in writing to the syndicate's managing agent, require him to make to the officer, within the specified period, a return apportioning, between the members of the syndicate, the syndicate's profit or loss as stated in the determination as so made, amended or corrected.

(2) If a syndicate's managing agent, having been required by a notice under paragraph (1) to deliver a return within the specified period, fails to deliver the return within that period, he shall be liable to a penalty equal to the prescribed amount multiplied by the number of days on which the failure continues.

(3) In paragraph (2) "the prescribed amount" means £5 for [].

(4) In this regulation "the specified period" means such period, not being less than thirty days and beginning with the day following the date of the notice under paragraph (1), as may be specified in that notice.

Effect of determinations on members

10.—(1) A determination of a syndicate's profit or loss for an underwriting year (whether as originally made or as amended or corrected) and any apportionment under regulation 9 shall, for the purpose of determining the liability to tax of each member of the syndicate, be conclusive against that member that the syndicate's profit or loss for that year, or the member's share of it, as the case may be, is as there stated.

(2) Where a determination of a syndicate's profit or loss for an underwriting year is amended or corrected at any time after the issue of a notice of assessment assessing any member of the syndicate to tax—

- (a) (i) in relation to members who are individuals, section 31A of the Management Act (right of appeal) and section 55 of that Act (postponement of tax), and
 - (ii) in relation to corporate members, paragraph 48 of Schedule 18,
- shall have effect, in relation to that member, as if any reference to the date of the notice of assessment, or the date of the issue of the notice of assessment, were a reference to the date of the amendment or correction; and
- (b) in the case of an amendment, an assessment which gives effect to the determination as amended shall not be out of time if it is made within one year of the date of the amendment.

(3) Paragraph (2)(b) shall not apply in the case of an HMRC amendment under regulation 6 which is made later than six years after the end of the [closing year].

Assessment of individual members: time limits

11. For the purposes of sections 36 and 40 of the Management Act and paragraph 46(2) of Schedule 18 (extension of time in cases of fraudulent or negligent conduct) anything done or omitted to be done by a syndicate's managing agent shall be deemed to have been done or omitted to be done by each member of the syndicate.

Non-delivery of return – reasonable excuse

12.—(1) For the purposes of these Regulations, a managing agent shall be deemed not to have failed to deliver—

- (a) a syndicate return by the filing date referred to in regulation 4(4), or

- (b) a return apportioning a syndicate profit or loss within the period referred to in regulation 9(4),

if he delivered it within such further time, if any, as the officer of Revenue and Customs may have allowed.

(2) Where a managing agent had a reasonable excuse for not delivering a return mentioned in paragraph (1), he shall be deemed not to have failed to deliver it—

- (a) unless the excuse had ceased, and
- (b) if, after the excuse ceased, he delivered it without unreasonable delay.

Determinations and notices of determinations

13. The like provisions as are contained in section 113(1B) of the Management Act shall apply to a determination or notice of a determination under regulations 6 or 7 as if the determination were an assessment and the notice of a determination were a notice of an assessment.

PART 3

Repayment of tax deducted etc. from investment income

14.—(1) In relation to an underwriting year, a syndicate's managing agent may, by notice in writing at any time during the period of six years beginning with the 1st March next following the end of the closing year for that year, make a claim to an officer of Revenue and Customs for the repayment of tax suffered by way of deduction on such of the syndicate's investment income as is allocated to that year in accordance with the rules or practice of Lloyd's.

(2) The syndicate's managing agent shall provide such information in support of the claim as the officer may reasonably require.

(3) Where an amount is repaid to a syndicate's managing agent under this regulation, he shall—

- (a) apportion that amount between the members of the syndicate in proportion to their interests in that part of the syndicate's investment income which has suffered tax by way of deduction; and
- (b) except in so far as it is required to meet a share of a loss of the syndicate, pay the amount so apportioned to each member, within 90 days of the repayment, to the members' agent of that member.

(4) The provisions of section 824 of the Taxes Act (repayment supplements: individuals and others) shall not apply to any repayment of tax made under this regulation.

(5) In this regulation "investment income", in relation to a syndicate, means the aggregate amount of the profits arising to all the members of the syndicate (taken together) from assets forming part of premium trust funds.

(6) In its application to a corporate member, this regulation shall have effect as if—

- (a) in paragraph (3)(b), the reference to the members' agent of each member were a reference to each corporate member itself; and
- (b) in paragraph (4), the reference to section 824 of the Taxes Act were a reference to section 826 of that Act (interest on tax overpaid).

Part 4

Consequential provisions and repeals

- 15.** In Schedule 1 of the Income Tax (Trading and Other Income) Act 2005 omit paragraph 465.
- 16.** Regulations 3, 7 and 8 of the Lloyd's Underwriters (Tax) Regulations 1995 are hereby revoked.