

MARKET BULLETIN

From	Rosaleen Moore, Tax Accountant (Ext: 6856)
Date	14 December 2006
Reference	Y3922
Subject	THE LLOYD'S UNDERWRITERS (DOUBLE TAX RELIEF) (CORPORATE MEMBERS) REGULATIONS 2006
Subject areas	UK tax – corporate members
Attachments	Appendices I & II
Action points	To note
Deadlines	Not applicable

1. *Introduction*

- 1.1 The Lloyd's Underwriters (Double Tax Relief) (Corporate Members) Regulations 2006 were laid before Parliament on 7 December 2006 and apply to corporate members' accounting periods ending on or after 31 December 2006. These Regulations, attached as Appendix I, contain new rules for corporate members in relation to the claiming of double taxation credit relief for overseas taxes paid.
- 1.2 Attached at Appendix II is a letter from HM Revenue & Customs ("HMRC") dated 6 December 2006 clarifying some issues related to the Regulations. More detailed guidance will be provided by HMRC in their Lloyd's Manual (available at www.hmrc.gov.uk) in due course.

2. *Detail*

- 2.1 These Regulations, which follow consultation with Lloyd's Tax Department and the market, provide for corporate members to have a pool of foreign tax available for credit relief. A corporate member can decide each year, on a territory by territory basis, whether to take a deduction for foreign tax paid or to put the foreign tax into the tax credit relief pool. The Regulations generally treat the foreign tax paid for a foreign period as corresponding to the corporate member's accounting period beginning in the following 12 months (so, for example, 2005 calendar year foreign

tax is treated as corresponding to the member's accounting period ending 31 December 2006).

- 2.2 The foreign tax suffered will be restricted at the point of entry to the pool in any cases where the effective rate of foreign tax is greater than the average rate of UK corporation tax for the corresponding accounting period (i.e. currently greater than 30%). The effective rate of foreign tax is calculated with reference to the profits of the member's underwriting business in the overseas territory to which the tax relates and therefore a separate calculation is required for every overseas territory for which creditable tax is paid.
- 2.3 HMRC have confirmed to us in a letter, attached as Appendix II to this bulletin, that where Lloyd's has a central agreement or arrangement to deal with taxes in overseas territories they will accept the foreign measure of profit under those arrangements for the purposes of calculating the effective rate of foreign tax. The 15 countries where there are currently such arrangements are: Australia, Belgium, Canada, Dominica, France, French Polynesia, Hong Kong, Israel, Japan, Malta, New Zealand, St Lucia, St Vincent and the Grenadines, Singapore, and the United States.
- 2.4 Credit relief will be available for amounts within the pool for an accounting period against the corporate member's corporation tax on profits of that accounting period or generally any of its three previous accounting periods, with any unused foreign tax being carried forward to the next accounting period. Once an amount of foreign tax has entered the pool, no further restriction or calculation is necessary when credit relief is actually claimed.
- 2.5 Where the foreign tax payable for a foreign period is later adjusted (either a further payment or a repayment), HMRC have advised us that it is necessary to go back and re-compute the amount eligible for entry into the pool on the basis of the revised figures and to adjust the pool and any relief given for that and other accounting periods accordingly.
- 2.6 Transitional provisions allow corporate members to choose whether to add to the pool any unrelieved amounts of foreign tax that relate to earlier foreign accounting periods. These amounts will similarly be restricted on entry to the pool. Where a corporate member chooses to keep unrelieved foreign tax which relates to an earlier accounting period outside of the pool, relief must be claimed for these amounts before relief is claimed for amounts in the pool.
- 2.7 To enable members to calculate the amount of foreign tax which can enter the pool, Lloyd's will where possible provide members with details regarding the foreign tax paid and the corresponding foreign profits. The process to provide this information will be communicated shortly.

3. Distribution and Contacts

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

Rosaleen Moore	tel: 020 7327 6856	email: rosaleen.moore@lloyds.com
Juliet Phillips	tel: 020 7327 6839	email: juliet.phillips@lloyds.com .
Helen Harrison	tel 020 7327 6859	email: helen.harrison@lloyds.com

Rosaleen Moore
Taxation

2006 No. 3262

CORPORATION TAX

The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006

<i>Made</i> - - - -	<i>6th December 2006</i>
<i>Laid before the House of Commons</i>	<i>7th December 2006</i>
<i>Coming into force</i> - -	<i>31st December 2006</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 229 of the Finance Act 1994(a), and now exercisable by them(b).

Preliminary

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 and shall come into force on 31st December 2006.

(2) These Regulations shall have effect in relation to accounting periods ending on or after the date on which these Regulations come into force.

Interpretation

2.—(1) This paragraph gives the meaning of abbreviated references to legislation used in these Regulations—

“ICTA” means the Income and Corporation Taxes Act 1988(c);

“Chapter 2 of Part 18” means Chapter 2 of Part 18 of ICTA (rules governing relief by way of credit).

(2) In these Regulations—

“foreign amount of tax” has the meaning given by regulation 5(4);

“foreign tax” means tax chargeable under the law of a territory outside the United Kingdom.

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- (a) 1994 c. 9. Section 229 was amended by section 83(2) of the Finance Act 1995 (c. 4), paragraph 6(b) of Schedule 10 to the Finance Act 1997 (c. 16) and section 45(5) to (7) of the Finance (No. 2) Act 2005 (c. 22).
- (b) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50 of that Act provides that in so far as it is appropriate in consequence of section 5 a reference in an enactment, however expressed, to the Commissioners of Inland Revenue is to be read as a reference to the Commissioners for Her Majesty's Revenue and Customs.
- (c) 1988 c. 1.

General scope of these Regulations

General provisions

3.—(1) These Regulations make provision for giving credit for foreign tax payable in respect of profits or losses arising from a corporate member's underwriting business in an accounting period.

(2) Relief from corporation tax shall be given under Chapters 1 and 2 of Part 18 of ICTA in respect of the foreign tax payable by allowing the amount of the pool of adjusted sums of foreign tax for an accounting period as a credit against the corporation tax payable on the profits arising from the corporate member's underwriting business.

(3) In these Regulations—

- (a) regulations 5 to 10 apply to determine how the amount of the pool of adjusted sums of foreign tax for an accounting period is ascertained, and
- (b) regulation 11 explains how the amount of the pool of adjusted sums of foreign tax for an accounting period is allowed as a credit against the corporation tax payable on the profits arising from the corporate member's underwriting business.

Application of sections in Chapter 2 of Part 18

4. The following sections of Chapter 2 of Part 18 apply for the purposes of these Regulations—
- section 792 (interpretation of credit code);
 - sections 793 to 795A(a) (general rules);
 - sections 797 to 798C(b) (the measure of the foreign income);
 - sections 805 and 806 (elections and claims).

The pool of adjusted sums of foreign tax

Allocation of foreign tax to accounting periods

5.—(1) The amount of the pool of adjusted sums of foreign tax for an accounting period is calculated by reference to the foreign tax payable for the corresponding foreign period of accounting.

(2) Adjusted sums of foreign tax must be calculated separately for each relevant territory outside the United Kingdom.

(3) For the purposes of these Regulations an accounting period corresponds to a foreign period of accounting if the foreign period of accounting ends in the period of twelve months immediately preceding the beginning of the accounting period.

Regulation 6 contains further provisions that apply if an accounting period or a foreign period of accounting is not a period of twelve months.

(4) In these Regulations an amount of foreign tax payable for a corresponding foreign period of accounting is called a foreign amount of tax.

Further provisions relating to accounting periods and to foreign periods of accounting

6.—(1) If a foreign period of accounting is more than twelve months—

- (a) the period must be split into successive periods of twelve months and a final period not exceeding twelve months, and
- (b) the profit of the corporate member's underwriting business and the amount of foreign tax must be apportioned rateably.

(a) Section 795A was inserted by paragraph 6 of Schedule 30 to the Finance Act 2000 (c. 17).

(b) Section 798C was substituted by section 86(1) of the Finance Act 2005 (c. 7).

(2) If a foreign period of accounting is less than twelve months and more than one such period ends in the period of twelve months immediately preceding the beginning of the accounting period, the accounting period corresponds to all those foreign periods of accounting.

(3) If a foreign period of accounting ends at a time which is within the immediately preceding twelve months period of more than one accounting period, the accounting period to which the foreign period of accounting corresponds is the first accounting period to begin after the foreign period of accounting ends.

(4) In paragraph (3) “the immediately preceding twelve months period” means the period of twelve months immediately preceding an accounting period.

Adjustments of foreign amounts of tax

7.—(1) If necessary, foreign amounts of tax must be adjusted in accordance with the provisions of this regulation to determine the adjusted sums of foreign tax.

(2) The effective rate of foreign tax must be determined in accordance with the equation—

$$ERFT = \frac{F}{P} \times 100$$

(3) In this regulation—

ERFT = the effective rate of foreign tax;

F = the foreign tax payable for the corresponding foreign period of accounting;

P = the profit of the corporate member’s underwriting business arising in the relevant territory outside the United Kingdom for the foreign period of accounting in respect of which the foreign tax is payable.

(4) If the effective rate of foreign tax for a corresponding foreign period of accounting is less than, or equal to, the average rate of corporation tax fixed for companies generally for the accounting period corresponding to the foreign period of accounting, the amount of the adjusted sum of foreign tax is the foreign amount of tax.

(5) If the effective rate of foreign tax for a corresponding foreign period of accounting is greater than the average rate of corporation tax fixed for companies generally for the accounting period corresponding to the foreign period of accounting, the amount of the adjusted sum of foreign tax is determined in accordance with the equation—

$$ASFT = \frac{CTR}{ERFT} \times FT$$

(6) In paragraph (5)—

ASFT = the amount of the adjusted sum of foreign tax;

CTR = the average rate of corporation tax fixed for companies generally for the accounting period corresponding to the foreign period of accounting;

FT = the foreign amount of tax.

Calculation of amount of pool of adjusted sums of foreign tax

8.—(1) The amount of the pool of adjusted sums of foreign tax for an accounting period is determined in accordance with the equation—

$$PASFT = AASFT + ATA + BFA$$

(2) In paragraph (1)—

PASFT = the amount of the pool of adjusted sums of foreign tax;

AASFT = the aggregate amount of adjusted sums of foreign tax;

ATA = an additional transitional amount (see regulation 9(2));

BFA = the amount brought forward from the previous accounting period (see regulation 11(2)).

(3) If regulation 10 applies, the amount of an adjusted sum of foreign tax must be determined in accordance with that regulation.

Transitional provision

9.—(1) This regulation applies if, for the first accounting period for which these Regulations apply—

- (a) a corporate member has an amount of tax chargeable under the law of a territory outside the United Kingdom for which relief has not been given, and
- (b) that amount of tax relates to foreign periods of accounting earlier than the period to which the first accounting period corresponds.

(2) If the corporate member so chooses, that amount of tax may be added to the pool of adjusted sums of foreign tax for that first accounting period.

(3) If paragraph (2) applies, the amount of tax must be adjusted in accordance with the provisions of regulation 7 if necessary.

(4) In any other case, relief must be given for that amount of tax before relief is given under these Regulations.

Refunds of foreign tax

10.—(1) This regulation applies if—

- (a) relief for foreign tax paid is given by way of credit against United Kingdom tax on profits arising from a corporate member's underwriting business, and
- (b) an amount of that foreign tax ("the repaid amount") is subsequently repaid to the member.

(2) For the purposes of regulations 5 to 8 the repaid amount must be dealt with in accordance with paragraphs (3) and (4).

(3) For the purposes of regulation 7—

- (a) the repaid amount is to be treated as if it were a foreign amount of tax repayable for the corresponding foreign period of accounting, and
- (b) the following are to be adjusted by deducting the repaid amount—
 - (i) the foreign tax payable for the corresponding foreign period of accounting (see paragraphs (2) and (3) of regulation 7), and
 - (ii) the foreign amount of tax (see paragraphs (5) and (6) of regulation 7).

(4) For the purposes of regulation 8 the repaid amount (adjusted, if necessary, under paragraph (3)) must be deducted from the amount AASFT.

(5) Paragraph (6) applies if—

- (a) any credit for foreign tax has been allowed to a corporate member under any arrangements, and
- (b) the amount of that credit is subsequently rendered excessive by reason of an adjustment of the amount of any tax payable under the laws of a territory outside the United Kingdom.

(6) The corporate member shall give notice in writing to an Officer of Revenue and Customs that an adjustment has been made that has rendered the amount of the credit excessive.

(7) A notice under paragraph (6) must be given within one year from the time of the making of the adjustment.

(8) A corporate member which fails to comply with the requirements imposed by paragraphs (6) and (7) in relation to any adjustment shall be liable to a penalty of an amount not exceeding the amount by which the credit allowed has been rendered excessive by reason of the adjustment.

(9) If the condition in paragraph (10) is met, any assessments may be made as are necessary to ensure that the total amount of the corporate member's income or chargeable gains is assessed, and the proper credit, if any, is given in respect of that income or those gains.

(10) The condition is that it appears that the assessment to corporation tax made on the corporate member in respect of the income or chargeable gains—

- (a) is not made in respect of the full amount of that income or those gains, or
- (b) is incorrect having regard to the repaid amount.

(11) Where the income is, or the chargeable gains are, entrusted to any person in the United Kingdom for payment, any such assessment may be made on the recipient of the income or gains; and, in the case of an assessment to corporation tax in respect of the income, may be assessed under Case VI of Schedule D.

Double taxation relief given

How relief is given

11.—(1) Relief from corporation tax for an accounting period in respect of foreign tax shall be given by allowing the amount of the pool of adjusted sums of foreign tax for that accounting period as a credit against corporation tax payable on the profits arising from a corporate member's underwriting business—

- (a) in that accounting period, or
- (b) in such one or more preceding accounting periods, beginning not more than three years before the accounting period mentioned in sub-paragraph (a),

or partly in the one way and partly in the other as the corporate member may choose.

(2) Any amount in the pool of adjusted sums of foreign tax for an accounting period that is not allowed as a credit against corporation tax in accordance with paragraph (1) shall be carried forward and added to the pool of adjusted sums of foreign tax for the next accounting period (see regulation 8(1)).

Paul Gray
Mike Hanson

6th December 2006

Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for double taxation relief in respect of the profits or losses arising from the underwriting business carried on by a corporate member of Lloyd's.

Regulations 1 and 2 deal with preliminary matters. Regulation 1 provides for citation, commencement and effect, and regulation 2 for interpretation.

Regulations 3 and 4 deal with general matters. Regulation 3 contains general provisions, and states the principle that relief from United Kingdom corporation tax shall be given under Chapters 1 and 2 of Part 18 of the Income and Corporation Taxes Act 1988 (c. 1) in respect of the foreign tax payable by allowing the amount of the pool of adjusted sums of foreign tax for an accounting period as a credit against the United Kingdom corporation tax payable on the profits arising from the corporate member's underwriting business. Regulation 4 provides for certain sections of Chapter 2 of Part 18 of the Income and Corporation Taxes Act 1988 to apply for the purposes of these Regulations.

Regulations 5 to 10 apply to determine how the amount of the pool of adjusted sums of foreign tax for an accounting period is ascertained. Regulation 5 provides that the amount of the pool of adjusted sums of foreign tax for an accounting period is calculated by reference to the foreign tax payable for the corresponding foreign period of accounting; and that an accounting period corresponds to a foreign period of accounting if the foreign period of accounting ends in the period of twelve months immediately preceding the beginning of the accounting period. An amount of foreign tax payable for a corresponding foreign period of accounting is called a foreign amount of tax. Regulation 6 contains further provisions that apply if an accounting period or a foreign period of accounting is not a period of twelve months. Regulation 7 provides for foreign amounts of tax to be adjusted in certain circumstances to determine the adjusted sums of foreign tax. Regulation 8 sets out how the calculation of the amount of the pool of adjusted sums of foreign tax is made. Regulation 9 contains transitional provisions; and regulation 10 contains provisions that apply if there is a refund of foreign tax.

Regulation 11 explains how the amount of the pool of adjusted sums of foreign tax for an accounting period is allowed as a credit against the United Kingdom corporation tax payable on the profits arising from the corporate member's underwriting business.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.



Mailstation A, 3 rd Floor
100 Parliament Street
LONDON
SW1A 2BQ

Mr David Clissitt
Head of Tax & Treasury
Lloyd's
One Lime Street
London EC3M 7HA

Tel 020 7147 2616

Fax 020 7147 2641

Email victor.j.baker@hmrc.gsi.gov.uk

Date 6 December 2006

Our Ref

www.hmrc.gov.uk

Your Ref

Dear David

The Draft Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006

I am grateful for your assistance in finalising these Regulations, and regret that the last stages have been so compressed. You will see below that I have been able to make one change, but the material is now in the process and accordingly final.

As discussed at our meeting on 5 October, the profit of the corporate member's underwriting business arising in the relevant territory, appearing as "P" in draft regulation 7(2), will be interpreted where appropriate as follows. For those territories where Lloyd's has a central arrangement, or agreement for dealing with members' relevant tax liabilities, HM Revenue & Customs will accept the profits calculated in accordance with that agreement as defining "P".

Currently it is understood that the overseas territories concerned are Australia, Belgium, Canada, Dominica, France, French Polynesia, Hong Kong, Israel, Japan, Malta, New Zealand, St Lucia, St Vincent and the Grenadines, Singapore, and the United States of America.

In order to maintain this list it would be appreciated if you will let us know if there is a material change to the method of calculating profits for any of these territories, or any additions to or subtractions from it.

You raised certain queries in relation to the pre-final draft of the Regulations. I have given instructions for a change to the treatment of repaid amounts at regulation 10 which should, I think, remove any concern that the calculation of the amount of the adjusted sum of foreign tax, ASFT, at draft regulation 7(5) needs to be undertaken separately for each amount of tax for a foreign period of accounting that becomes payable, including additional amounts. Regulation 10(4) is still in place – the draftsman feels that some explicit reference is needed

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to making a deduction from what is otherwise expressed as additive amounts, but regulation 10(3) is now clear that the repayment is deducted from F and FT. This should dispose of any argument by implication that each item needs to be considered separately.

As regards pre-Regulations foreign tax that it is not brought into the pool under draft regulation 9(2), I do not consider that regulation 10 could apply to it as the tax would not be foreign tax paid for a foreign period of accounting within the currency of the Regulations.

These points will be reflected in the HMRC guidance manual, LLM, to which amendments will be made as soon as possible.

A copy of the final draft is attached for information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Victor Baker', written in a cursive style.

Victor Baker
Insurance Group, Lloyd's