AFM: I-E Update

June 2024

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Date

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Long-term business fixed capital

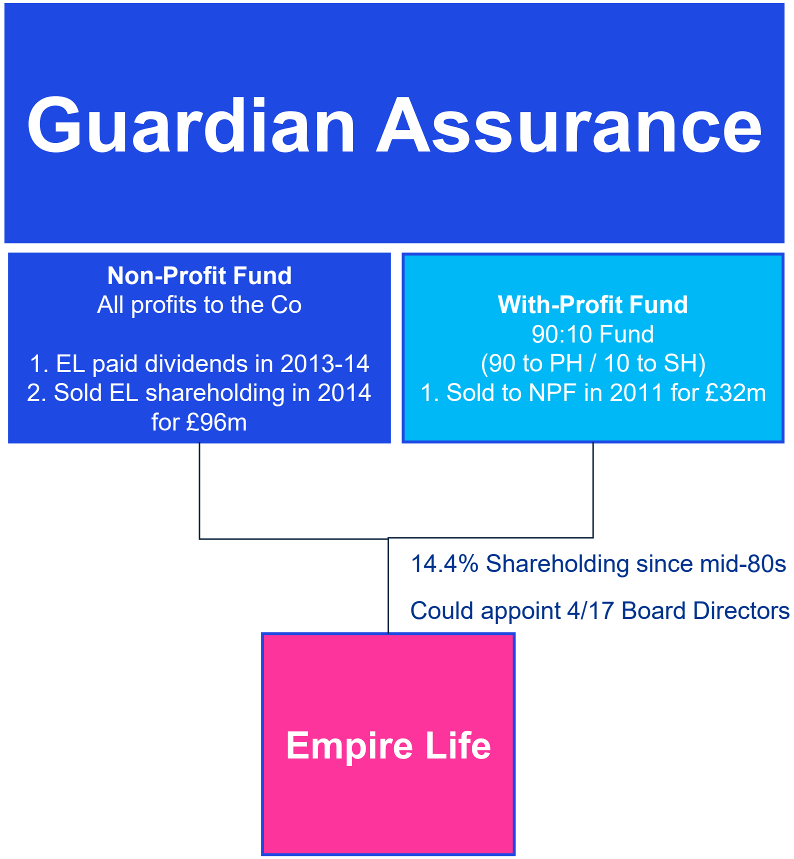
Fact Pattern – Guardian Assurance

Case:

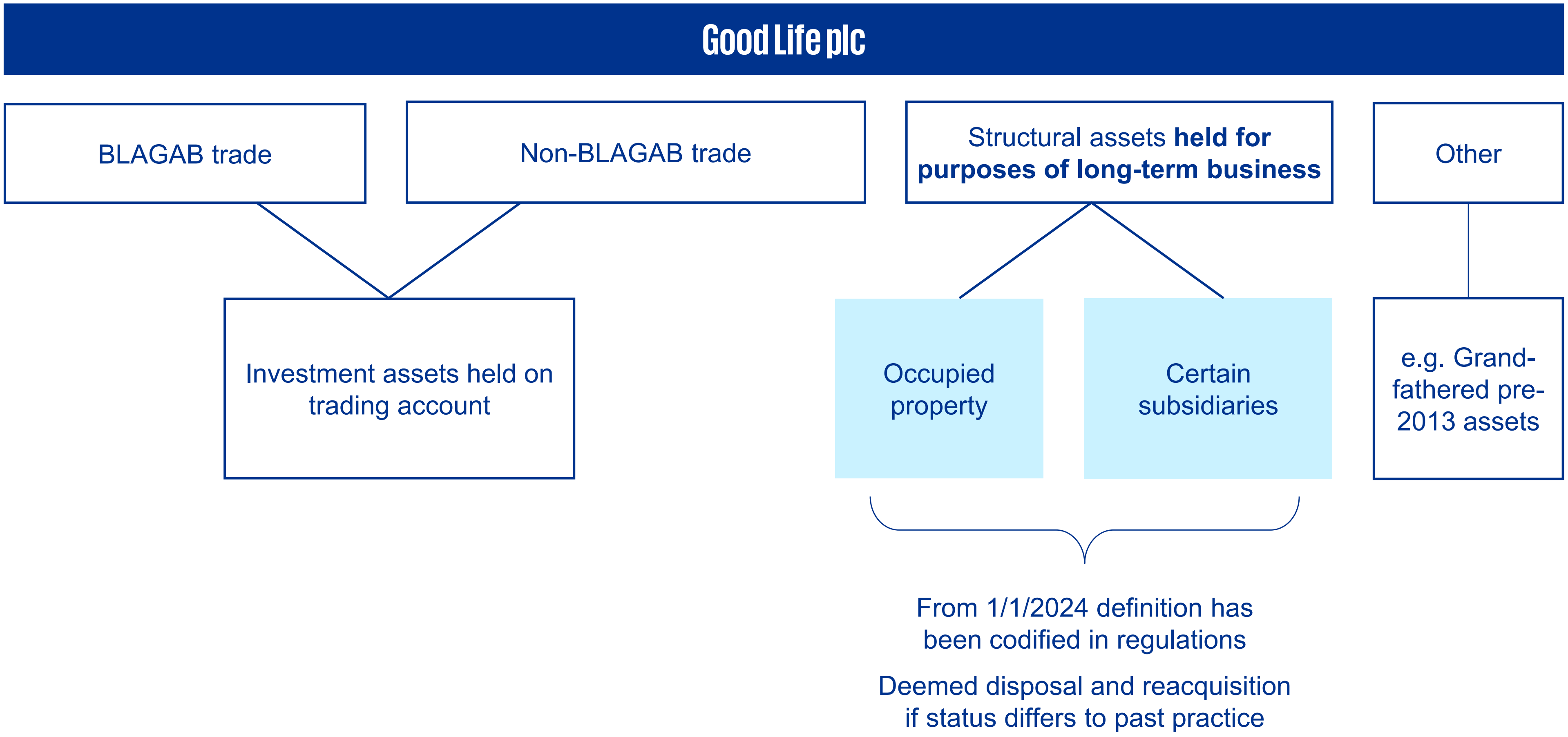
- Disposal of 14.4% interest in a life assurance company
- First Tier Tribunal case of Guardian Assurance Ltd vs HMRC [2022]
- Taxpayer win
- No appeal

Subsequently:

- HMRC seeking to clarify and narrow the definition of LTBFC
- Informal consultation from May 2023
- Short public consultation closed Wednesday 26 September 2023
- formal consultation on "Draft regulations: The Insurance Companies ("The Long-term Business Fixed Capital") Regulations 2023"
- Regulations apply for accounting periods b.o.o.a 1 January 2024



Long-term business fixed capital assets



LTBFC: Why does it matter?

Good Life plc			
BLAGAB trade	Non-BLAGAB trade	Structural assets held for long-term business	Other

Tax on return

Dividend/SSE relief Deferral for gains Interest taxable	Fully taxable	Dividend and SSE reliefs. Deferral for gains. Interest taxable

Group relief

No	**No**	**Yes**

LTBFC: Definition of structural assets

Proprietary company	Company carrying on mutual life assurance business
Assets of the LTB not in a with-profit fund and: • Are specified, or • Insurance dependents per old Form 13	Assets of the LTB and: • Are specified (wider list), or • Insurance dependents per old Form 13

List now **exhaustive.**

Now clarity on with-profit funds.

Thus, mutuals can hold subsidiaries directly in its WPF.

So **group relief** between them is possible.

LTBFC: Specified assets: Main list

Specified assets (Regulation 2023/1236)

Debt/equity etc interests in 51% subsidiaries which are:

- Insurance companies
- Foreign insurance companies
- Intra-group service companies
- Holding company for any of the above
- Any of the above which has become dormant

Property occupied by the Group (51%)

Shares (not debt) in matching adjustment SPVs

Goodwill

Service company (Guidance LAM11040)

"Providing services means":-

- investment management activities (incl. minority co investor in a CIS)
- distributing insurance and investment products to third parties
- corporate trustees
- payroll or employment services
- property services
- technology and IT services
- administration and managements services

LTBFC: Specified assets: Further items for mutuals

Specified assets **(Regulation 2023/1236)**

Debt/equity interests in

- Other 51% subsidiaries other than
  - Investment companies
  - Matching Adjustment companies*
- Holding companies of trading groups

* Note the ***equity*** is LTBFC per previous slide, the effect of this exclusion is to prevent the ***debt*** from being a LTBFC asset

LTBFC: Some practical issues

Ambiguity over status 2013 to 2023?

- Clarity from 2024
- Is there a disposal & acquisition at transition?
- Box transfer under FA12/S116(6)
- No SSE (Sch 7AC para 6(1)(c) TCGA 1992)
- Transition 31/12/23 or 1/1/24?

Meaning of mutual

- Same meaning as FA 2012
- Some mutuals may be taxed on a proprietary basis

Other assets

- Are there any assets not “held for the purposes of the long-term business?
- LAM 11070 non-LTB assets “very limited”.
- “In general all of the assets of a life company will support the solvency of the long-term business.”

Composites

- Are subsidiaries held by LTB or GI?
- Fund structure not clear

Are all entities covered?

- OEIC ACD?
- Charitable foundation?

02

BLAGAB reinsurance

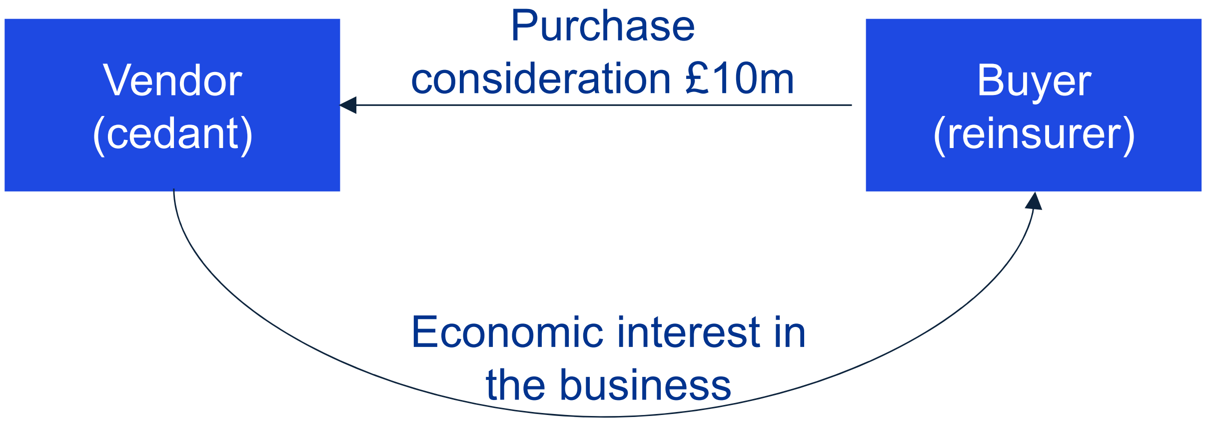
BLAGAB reinsurance: What are there opportunities?

Potential uses of BLAGAB reinsurance	
Purpose	**Tax impact**
M&A: To facilitate disposal/acquisition of non-core business	
• Pre Part VII	✓
• Post Part VII (if some assets cannot be easily moved)	✗
To provide external fund links to other insurer's funds (mirror funds)	✗
Reinsurance of non-investment risk	✓
Tax avoidance (shelter XSI with 3rd party's XSE)	✗

New

BLAGAB reinsurance: M&A scenario

2 new measures announced by WMS on 15 December 2022



1) £10m consideration no longer taxable in I-E as "commission" if:

- Substantially all of the insurance risks relating to the business that is reinsured

FA 2012 s92

Guidance LAM 03500

2) Reinsurer no longer gets non-BLAGAB treatment if:

- A Part VII is expected
- Not otherwise excluded business (e.g. intra-group)

FA 2012 s130A

Guidance LAM 10305

BLAGAB Reinsurance: Avoiding the problems

Cedant

Reinsurer

Examples	Potential tax problems
Investment risk and assets transfer	s90 imputed I-E charge in cedant (punitive)
3rd party & Part VII expected & funds withheld & all risks reinsured	
Only part of product's risks are acquired	Taxation of purchase consideration as I-E receipt in vendor?
Most UK to UK intra-group reinsurance	
Risk transferred when no Part VII anticipated	Double taxation of same profits (may be of less concern to mutuals)

If relevant conditions are met, a ***tax neutral*** outcome should be possible.

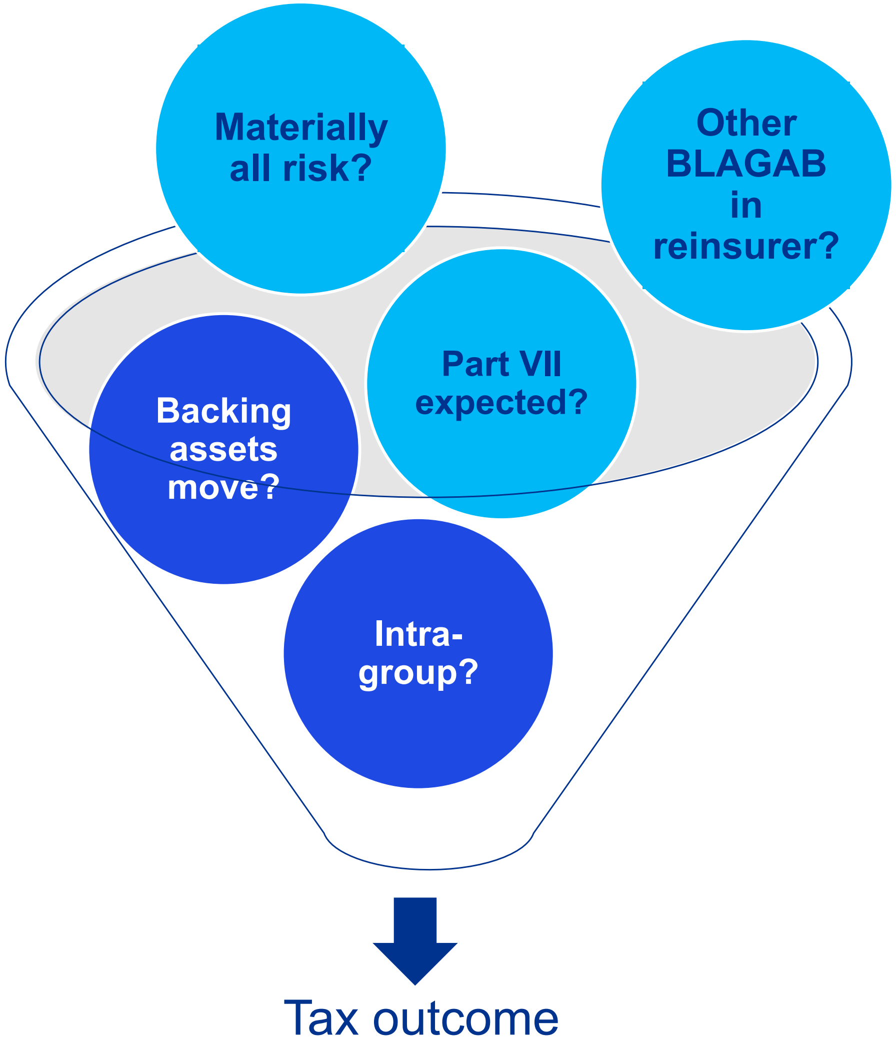
BLAGAB reinsurance: a number of variables

Taxation of BLAGAB reinsurance has always been problematic.

Reform of the rules in 2022 addressed some specific problems but subject to conditions being met.

This significantly simplifies reinsurance in an M&A context.

Tax outcome for reinsurance of BLAGAB now subject to a number of variables.



BLAGAB reinsurance: Where we are now

Solutions

2 targeted measures - Tactical solutions

Very welcome on commission

Supports consolidation and M&A – provides solutions for small/legacy BLAGAB books

Anomalies

Some details counter-intuitive in pre-Part VII period

Lack of clarity on commission/claim if reinsure only part of the risk

Not tax-efficient absent a Part VII. Lack of symmetry as reinsurer fully taxable but no relief in the cedant's I-E

Constraints

S90 imputed return not aligned with commercial return

S90 true-up mechanism is very limited

Exemptions from s90 could be more generous

Can't easily offer mirror funds

03
Other matters

BLAGAB acquisition expenses

From 2023

- BLAGAB acquisition expenses are no longer spread over 7 years
- Applies whether IFRS or UK GAAP is used.
- Follow timing of recognition in the accounts.
  - i.e. when accounted for an as "expense" as opposed to when provided for as a future expenses as part of an actuarial liability
- Old expenses continue to run off on the original timetable.