



# Finance Act 1993

## 1993 CHAPTER 34

### PART II

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER II

#### EXCHANGE GAINS AND LOSSES

*Interpretation: other provisions*

#### **158 Translation times and accrual periods.**

- (1) Where a qualifying company holds a qualifying asset the following are translation times as regards the asset—
  - (a) the time immediately after the company becomes entitled to the asset;
  - (b) the time immediately before the company ceases to be entitled to the asset;
  - (c) any time which is a time when an accounting period of the company ends and which falls after the time mentioned in paragraph (a) above and before the time mentioned in paragraph (b) above.
- (2) Where a qualifying company owes a qualifying liability the following are translation times as regards the liability—
  - (a) the time immediately after the company becomes subject to the liability;
  - (b) the time immediately before the company ceases to be subject to the liability;
  - (c) any time which is a time when an accounting period of the company ends and which falls after the time mentioned in paragraph (a) above and before the time mentioned in paragraph (b) above.
- (3) Where a qualifying company enters into a currency contract the following are translation times as regards the contract—

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- (a) the time immediately after the company becomes entitled to rights and subject to duties under the contract;
  - (b) the time immediately before the company ceases to be entitled to those rights and subject to those duties;
  - (c) any time which is a time when an accounting period of the company ends and which falls after the time mentioned in paragraph (a) above and before the time mentioned in paragraph (b) above.
- (4) As regards a qualifying asset, a qualifying liability or a currency contract an accrual period is a period which—
- (a) begins with a time which is a translation time (other than the last to fall) as regards the asset, liability or contract, and
  - (b) ends with the time which is the next translation time to fall as regards the asset, liability or contract.

### **159 Basic valuation.**

- (1) Subject to the following provisions of this section, the basic valuation of an asset or liability is—
- (a) such valuation as the company puts on it with regard to the time immediately after the company becomes entitled or subject to it, or
  - (b) such valuation as the company would put on it with regard to that time under normal accountancy practice, if that valuation is different from that found under paragraph (a) above.
- (2) Where (apart from this subsection) the valuation under subsection (1) above would be in a currency (the actual currency) other than the nominal currency, it shall be taken to be the equivalent, expressed in terms of the nominal currency, of the valuation in the actual currency; and the translation required by this subsection shall be made by reference to the London closing exchange rate for the two currencies concerned for the day in which the time mentioned in subsection (1) above falls.
- (3) The basic valuation of a liability falling within section 153(2)(c) or (d) above is the consideration for the company becoming subject to the liability; and any consideration or part that is not pecuniary shall be taken to be equal to its open market value—
- (a) found at the time when the company becomes subject to the liability, and
  - (b) if part of the consideration is pecuniary, expressed in the same currency as that part.
- (4) Where (apart from this subsection) the valuation under subsection (3) above would be in a currency (the actual currency) other than the nominal currency, it shall be taken to be the equivalent, expressed in terms of the nominal currency, of the valuation in the actual currency; and the translation required by this subsection shall be made by reference to the London closing exchange rate for the two currencies concerned for the day on which the company becomes subject to the liability.
- (5) Subsections (6) to (9) below apply where—
- (a) the company becomes entitled to a right to settlement under a qualifying debt on a security, and
  - (b) the circumstances are such that section 713(2)(b) or (3)(b) of the Taxes Act 1988 applies (transferee treated as entitled under accrued income scheme to relief or a sum found in sterling).

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- (6) In such a case the basic valuation of the right shall be found by taking the consideration for the company becoming entitled to the right and—
- (a) subtracting such of the amount found under section 713(2)(b) as is attributable to the right, or
  - (b) adding such of the amount found under section 713(3)(b) as is attributable to the right;
- and any apportionment of consideration or of the amount found under section 713(2)(b) or (3)(b) shall be made on a just and reasonable basis.
- (7) The following rules apply for the purposes of subsection (6) above—
- (a) any consideration or part that is pecuniary shall be expressed in sterling (if not otherwise so expressed);
  - (b) any consideration or part that is not pecuniary shall be taken to be equal to its open market value, found at the time when the company becomes entitled to the right and expressed in sterling.
- (8) Where the nominal currency of the right mentioned in subsection (5) above is not sterling, the valuation found in sterling under subsection (6) above shall be taken to be its equivalent expressed in terms of the nominal currency.
- (9) Any translation required by subsection (7) or (8) above shall be made by reference to the London closing exchange rate for the currencies concerned for the day on which the company becomes entitled to the right.
- (10) Subsections (11) and (12) below apply where—
- (a) section 127 above applies as regards an asset or liability for an accrual period (the earlier period), and
  - (b) section 125 or 127 above applies as regards the asset or liability for the next accrual period (the later period).
- (11) As regards the later period the basic valuation of the asset or liability shall be taken to be—
- (a) the nominal amount of the debt outstanding immediately before the beginning of the later period, or
  - (b) if section 127(7) above also applies as regards the earlier period, the amount found under section 127(10) for that period.
- (12) As regards an accrual period which falls after the later period the basic valuation of the asset or liability shall be the amount found under subsection (11) above, subject to any subsequent application of that subsection.

**Modifications etc. (not altering text)**

- C1** S. 159 modified (23.3.1995) by S.I. 1994/3226, **regs. 6(1)(6), 8(5)**  
S. 159 excluded (23.3.1995) by S.I. 1994/3226, **reg. 6(3)**

**160 Nominal currency of assets and liabilities.**

- (1) As regards an asset mentioned in section 153(1)(a) above, or a liability mentioned in section 153(2)(a) or (b) or (c) above, the nominal currency is the settlement currency of the debt mentioned in the paragraph concerned.

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- (2) As regards an asset mentioned in section 153(1)(b) above, the nominal currency is the currency concerned.
- (3) As regards an asset mentioned in section 153(1)(c) above, the nominal currency is the currency in which the share is denominated.
- (4) As regards a liability mentioned in section 153(2)(d) above, the nominal currency is the currency in which the share is (or shares are) denominated.

### **161 Settlement currency of a debt.**

- (1) Subject to the following provisions of this section, the settlement currency of a debt is the currency in which ultimate settlement of the debt falls to be made.
- (2) In a case where—
  - (a) ultimate settlement of a debt falls to be made in a particular currency, but
  - (b) the amount of the currency falls to be determined by reference to the value at any time of an asset consisting of or denominated in another currency,
 the settlement currency of the debt is the other currency.
- (3) As regards a debt mentioned in section 153(2)(b) above, and as regards a case where section 156(3) above applies, in subsections (1) and (2) above “falls” (in each place) shall be read as “ would fall ”.
- (4) Where the settlement currency of a debt cannot be determined under subsections (1) to (3) above, the settlement currency of the debt is the currency that can reasonably be regarded as the most appropriate—
  - (a) deeming the state of affairs at settlement to be the same as the state of affairs at the material time, and
  - (b) having regard to subsections (1) to (3) above;
 and the material time is the time immediately after the company becomes entitled to the asset mentioned in section 153(1)(a) above or subject to the liability mentioned in section 153(2)(a) or (b) or (c) above.
- (5) For the purposes of this section the ecu shall be regarded as a currency.

### **162 Nominal amount of a debt.**

- (1) The nominal amount of a debt outstanding at any time is the amount of the debt outstanding at that time, expressed in terms of the settlement currency of the debt.
- (2) In a case where—
  - (a) a payment or repayment is made at any time in a currency other than the settlement currency of a debt, and
  - (b) it falls to be decided whether there is in consequence an increase or decrease in the nominal amount of the debt outstanding,
 the amount of the payment or repayment shall be taken to be its equivalent expressed in terms of the settlement currency of the debt.
- (3) Any translation required by this section shall be made by reference to the London closing exchange rate for the currencies concerned for the day in which the time concerned falls.

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### **163 Local currency of a trade.**

- (1) Subject to subsection (2) below, the local currency of a trade for an accounting period is sterling.
- (2) Where by virtue of regulations under section 93 above the basic profits or losses of a trade for an accounting period are to be computed and expressed in a currency other than sterling for the purposes of corporation tax, that other currency is the local currency of the trade for the period.
- (3) Where by virtue of regulations under section 94 above the basic profits or losses of part of a trade for an accounting period are to be computed and expressed in a particular currency for the purposes of corporation tax, that currency is the local currency of the part for the period.
- (4) For the purposes of this section the ecu shall be regarded as a currency other than sterling; and references in this Chapter to a currency other than sterling shall be construed accordingly.

### **164 Interpretation: miscellaneous.**

- (1) References to—
  - (a) initial exchange gains and losses,
  - (b) exchange gains and losses of a trade or of part of a trade,
  - (c) non-trading exchange gains and losses, and
  - (d) the accrual of gains and losses mentioned in paragraphs (a) to (c) above,shall be construed in accordance with sections 125 to 129 above and Schedule 15 to this Act.
- (2) References to a currency contract shall be construed in accordance with section 126(1) above.
- (3) References to a qualifying debt shall be construed in accordance with section 153(10) above.
- (4) References to a company's commencement day shall be construed in accordance with section 165(7) below.
- (5) The local currency equivalent of a valuation of an asset or liability, or of an amount, is that valuation or amount expressed in terms of the local currency (a process sometimes known as translation).
- (6) References to the basic profits or losses of a trade for an accounting period shall be construed in accordance with section 93(2) above.
- (7) References to the basic profits or losses of part of a trade for an accounting period shall be construed in accordance with section 94(4) above.
- (8) References to a share are to a share in a company (whether or not the qualifying company).
- (9) Shares are of the same kind if they are treated as being of the same kind by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange.

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- (10) Rights to settlement under debts on securities are of the same kind if the securities are treated as being of the same kind by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange.
- (11) “Security”, in the expression “debt on a security”, has the meaning given by section 132 of the <sup>M1</sup>Taxation of Chargeable Gains Act 1992.
- (12) References to deep gain securities shall be construed in accordance with Schedule 11 to the <sup>M2</sup>Finance Act 1989.
- (13) References to the ecu are to the European currency unit as defined for the time being in Council Regulation No. 3180/78/EEC or in any Community instrument replacing it.
- (14) “Prescribed” means prescribed by regulations made under this Chapter.
- (15) A reference to this Chapter includes a reference to regulations made under it and a reference to a provision of this Chapter includes a reference to regulations made under the provision, unless otherwise required by the context or regulations.
- (16) Sections 152 to 163 above, and the preceding provisions of this section, apply for the purposes of this Chapter.

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**Marginal Citations**

**M1** 1992 c. 12.

**M2** 1989 c. 26.

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