
STATUTORY INSTRUMENTS

1994 No. 3226

INCOME TAX

**The Exchange Gains and Losses
(Transitional Provisions) Regulations 1994**

Made - - - - *15th December 1994*
Laid before the House of
Commons - - - - *16th December 1994*
Coming into force - - *23rd March 1995*

The Treasury, in exercise of the powers conferred on them by sections 164(14), 165(4) and (5) and 167(1) and (4) to (6) of, and Schedule 16 to, the Finance Act 1993⁽¹⁾, hereby make the following Regulations:

PART I

INTRODUCTORY PROVISIONS

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Exchange Gains and Losses (Transitional Provisions) Regulations 1994.

(2) These Regulations shall come into force on 23rd March 1995.

(3) In these Regulations, subject to any contrary intention—

- (a) “the 1992 Act” means the Taxation of Chargeable Gains Act 1992⁽²⁾;
- (b) “the 1993 Act” means the Finance Act 1993;
- (c) any reference to Chapter II is a reference to Chapter II of Part II of the 1993 Act;
- (d) any reference to a particular section is a reference to that section of that Act;
- (e) any reference to an exchange gain or loss is a reference to an exchange gain or loss of a trade or part of a trade or a non—trading exchange gain or loss;
- (f) any reference to an exchange difference is a reference to any gain or loss which is attributable to fluctuations in currency exchange rates;

(1) 1993 c. 34.
(2) 1992 c. 12.

(g) “a regulation 6(3) asset” means an existing asset the basic valuation of which is determined in accordance with regulation 6(3); and

(h) “the regulation 2(2) provisions” means the provisions specified in regulation 2(2).

(4) In determining for the purposes of these Regulations whether any gain or loss or other amount has or has not been taken into account for the purposes of corporation tax in computing a company’s profits and gains (or the profits and gains of a trade) for an accounting period, or would have been or would not have been so taken into account if the company had been within the charge to corporation tax at the time the gain or loss accrued, there shall be disregarded, subject to any contrary intention, any insufficiency of profits or gains for that period.

(5) In computing the chargeable profits for an accounting period of a controlled foreign company as respects which—

(a) a direction under section 747 of the Income and Corporation Taxes Act 1988⁽³⁾ has been given for the company’s accounting period which includes the day preceding the day on which these Regulations come into force, or

(b) it can reasonably be assumed that such a direction would have been given for that accounting period but for the fact that the company pursues, within the meaning of Part I of Schedule 25 to that Act⁽⁴⁾, an acceptable distribution policy,

it shall be assumed for the purposes of these Regulations (if it would not otherwise be so assumed) that the company is resident in the United Kingdom for the period as respects which the computation is being made for any other period (whether earlier or later than the period referred to in paragraph (a) or (b) above), and any gain or loss or other amount which is, or has been, taken into account in computing the company’s chargeable profits for any period (or which would have been so taken into account if such a computation had been made) shall be treated for those purposes as being, or having been, taken into account for the purposes of corporation tax in computing the company’s profits and gains for that period.

Interaction with other Exchange Gains and Losses provisions

2.—(1) Subject to any provision to the contrary, in any case where a calculation falls to be made in relation to an existing asset, liability or contract in accordance with any of these Regulations and at the same time or in relation to the same event a calculation also falls to be made in relation to that asset, liability or contract in accordance with any of the provisions specified in paragraph (2) below, then the calculation to be made in accordance with these Regulations shall be made first and shall have effect for the purposes of the calculation falling to be made in accordance with any of those provisions.

(2) The provisions referred to above are the following—

Sections 136, 137 and 139 to 141 of the 1993 Act;

The Exchange Gains and Losses (Alternative Method of Calculation of Gain or Loss) Regulations 1994⁽⁵⁾;

The Exchange Gains and Losses (Deferral of Gains and Losses) Regulations 1994⁽⁶⁾.

(3) 1988 c. 1.

(4) Part I of Schedule 25 was amended by section 67 of the Finance Act 1990 (c. 29) and by section 134 of the Finance Act 1994 (c. 9).

(5) S.I.1994/3227.

(6) S.I. 1994/3228.

PART II

MISCELLANEOUS TRANSITIONAL PROVISIONS

Delayed application of Chapter II in relation to certain fluctuating debts

3.—(1) Subject to paragraph (5) below, paragraph (2) below applies in relation to an asset or liability which is held or owed by a company and falls within section 165(4)(a) where—

- (a) any exchange difference accruing to the company on a disposal or settlement by the company of the asset or liability immediately before the company's commencement day would not have been taken into account for the purposes of corporation tax in computing the company's profits and gains of that accounting period or would not be so taken into account if the company had been within the charge to corporation tax at the time the gain or loss accrued,
- (b) the company was within the charge to corporation tax immediately before the company's commencement day,
- (c) the asset or liability is the right to settlement of a debt or the duty to settle a debt, and
- (d) the amount of the debt or the term of the debt (or both) are not fixed.

(2) In any case where this paragraph applies, the company shall be treated for the purposes of Chapter II—

- (a) if before the sixth anniversary of the company's commencement day the amount of the debt is increased (whether or not it has previously been reduced or after the increase is lower than its original amount), as becoming entitled to the asset or subject to the liability in question, at the beginning of the day on which the amount of the debt is increased;
- (b) if paragraph (a) does not apply and the company is entitled to the asset or subject to the liability in question at the beginning of the day which is the sixth anniversary of the company's commencement day, as becoming entitled to the asset or subject to the liability at the beginning of that day;
- (c) if neither paragraph (a) nor paragraph (b) apply, as never having been entitled to the asset or subject to the liability in question;

and accordingly section 165(2) shall not apply in relation to that asset or liability.

(3) In relation to an asset or liability falling within paragraph (2)(a) above, the amount of any initial exchange gain or loss which accrues to the company for any accrual period which ends before the sixth anniversary of the company's commencement day shall be reduced by an amount equal to the amount found in accordance with paragraph (4) below.

(4) There shall be calculated the amount of any exchange gain or loss which would have accrued as respects the asset or liability for the accrual period in question if the amount of the debt outstanding at any time in that period had been equal to the lowest amount at which the debt had stood at any time on or after the company's commencement day and before the end of that period.

(5) Paragraph (2) above shall not apply in relation to any company which elects that section 165(2) should apply in relation to all the assets or liabilities held or owed by the company and which apart from the election would fall within that paragraph, and an election under this paragraph—

- (a) shall be made by notice to the inspector before the expiry of the period of 92 days beginning with the company's commencement day or, if later, the expiry of the period of 183 days beginning with 23rd March 1995, and
- (b) shall have effect as from the beginning of the company's commencement day and shall be irrevocable.

(6) For the purposes of this regulation the term of a debt is fixed if (and only if)—

- (a) it falls within paragraph (9) below, or
- (b) it is provided that—
 - (i) the principal is to be repayable in total on one specified date or in specified amounts or proportions on specified dates; and
 - (ii) any part of the principal once repaid cannot be redrawn; and
 - (iii) any interest which, if not paid when due, is to be capitalised or rolled—up, is to be added to the principal on the due date and repayable on the same terms as the principal.
- (7) For the purposes of paragraph (6)(b) above there shall be disregarded any provision—
 - (a) for the repayment of the debt on the occurrence of an event which at the beginning of the term is neither certain nor likely to occur, or
 - (b) for the early repayment of the debt at the option of the borrower.
- (8) For the purposes of this regulation the amount of a debt is fixed if (and only if)—
 - (a) it falls within paragraph (9) below, or
 - (b) the maximum amount of the principal is specified at the commencement of the term of the debt and the principal cannot be increased beyond that maximum amount (except as mentioned in paragraph (6)(b)(iii) above).

In determining whether a debt falls within this paragraph there shall be disregarded any term in so far as it provides for the principal or any interest to be calculated by reference to any withholding or other tax (including foreign tax).

- (9) A debt falls within this paragraph if—
 - (a) it is a debt on a deep gain security for the purposes of paragraph 1 of Schedule 11 to the Finance Act 1989(7) and the amount payable on redemption is payable on one specified date, or
 - (b) it is a debt on a qualifying indexed security for the purposes of that paragraph, or
 - (c) it is a debt on a deep discount security for the purposes of paragraph 1 of Schedule 4 to the Income and Corporation Taxes Act 1988(8).
- (10) In relation to any asset or liability to which paragraph (2) above applies, any reference in Chapter II or in any Regulations made under that Chapter (including the following provisions of these Regulations)—
 - (a) to an existing asset or liability shall include a reference to that asset or liability as from the day on which the company is treated as becoming entitled to the asset or subject to the liability;
 - (b) to the company's commencement day shall be construed as a reference to that day.

Bad debts

- 4.—(1) Section 144(1) shall have effect in any case where—
 - (a) the asset or liability referred to in subsection (1)(a) is an existing asset or liability held or owed by a qualifying company, and

(7) 1989 c. 26. Paragraph 1 of Schedule 11 was amended by paragraph 19(6) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 and by paragraph 2 of Schedule 7 to the Finance (No. 2) Act 1992 (c. 48).

(8) Paragraph 1 of Schedule 4 was amended by paragraph 2 of Schedule 10 to the Finance Act 1989, by section 59 of, and paragraph 26 of Schedule 10 to, the Finance Act 1990 and by paragraph 14(57) of Schedule 10 to the Taxation of Chargeable Gains Act 1992.

(b) the accounting period referred to in subsection (1)(b) is the company's accounting period ending immediately before the company's commencement day, subject to paragraph (2) below.

(2) Subsection (1) shall have effect as if for the words following paragraph (b) there shall be substituted—

“the company shall be treated for the purposes of this Chapter as if it ceased to be entitled or subject to the asset or liability immediately before the end of the company's commencement day, and any exchange gain or loss accruing to the company on that day shall be deemed not to accrue.”

Exchange rate at translation times

5. Section 150 shall apply in relation to a translation time which is the first translation time as respects an existing asset, liability or contract held or owed by a company—

- (a) with the omission in subsection (1) of “at a translation time”;
- (b) with the omission of subsections (4) and (8) to (14) and, in the case of a regulation 6(3) asset, of subsection (5);
- (c) with the substitution in subsections (5) and (6)(b) for “the last day of the accounting period” of “the day immediately preceding the company's commencement day or, if that day is not the last day of an accounting period of the company, in the company's accounting records for that day,”; and
- (d) with the substitution in subsection (7) for the “last day of the accounting period” of “the day immediately preceding the company's commencement day”.

Basic valuation

6.—(1) Subject to paragraph (2) below, for the purposes of determining the basic valuation of an existing asset or liability held or owed by a company, other than an asset to which paragraph (3) below applies or a debt to which paragraph (6) below applies, section 159 shall have effect—

- (a) with the substitution in subsection (1)(a) for “after the company becomes entitled or subject to it” of “before the company's commencement day”; and
- (b) with the omission of subsections (3) to (12).

(2) Paragraph (1) above shall not apply in relation to any company which elects that section 159 should apply in relation to all qualifying assets which are either debts on a security or shares held by the company and which apart from the election would fall within that paragraph, and an election under this paragraph—

- (a) shall be made by notice to the inspector before the expiry of the period of 92 days beginning with the company's commencement day or, if later, the expiry of the period of 183 days beginning with 23rd March 1995, and
- (b) shall have effect as from the beginning of the company's commencement day and shall be irrevocable,

but in the application of section 159 in relation to any asset by virtue of an election under this paragraph, section 165(2) shall be disregarded.

(3) In the case of any existing asset held by a qualifying company a disposal of which in the open market by that company immediately before its commencement day at the asset's market value at that time would have given rise to a chargeable gain or allowable loss—

- (a) section 159 shall not apply, but

- (b) the basic valuation of the asset shall be taken to be equal to its market value immediately before the company's commencement day,

and for the purposes of this paragraph the market value shall be computed in accordance with the provisions of the 1992 Act but in the nominal currency of the asset.

(4) For the purposes of determining under paragraph (3) above whether a gain or a loss would have accrued on any disposal (but not for the purposes of computing the basic valuation or for any other purpose)—

- (a) it shall be assumed that the disposal was not in such circumstances that by virtue of any provision of the 1992 Act neither a gain nor a loss would accrue on the disposal, and
 (b) if the market value is such that neither a gain nor a loss would accrue on the disposal, the market value shall be increased by £100.

(5) Any expression used in paragraph (3) or (4) which is not defined in Chapter II shall have the same meaning as in the 1992 Act.

(6) Paragraph (1) above does not apply in relation to—

- (a) a debt on a deep gain security for the purposes of paragraph 1 of Schedule 11 to the Finance Act 1989, or
 (b) a debt on a qualifying indexed security for the purposes of that paragraph, or
 (c) a debt on a deep discount security for the purposes of paragraph 1 of Schedule 4 to the Income and Corporation Taxes Act 1988;

but in the application of section 159 in relation to any such debt, section 165(2) shall be disregarded.

PART III

PRE—COMMENCEMENT GAINS AND LOSSES: CASE I ASSETS AND LIABILITIES AND CAPITAL ASSETS

Interpretation

7.—(1) For the purposes of any computation required to be made for the purposes of regulation 10 or 11 below, an amount which is a gain shall be taken to be a positive figure and an amount which is a loss shall be taken to be a negative figure, but for the purposes of regulations 12 and 13 all amounts shall be taken to be positive.

(2) In this Part—

“attributed gain”, in relation to any asset or liability, means a gain which is attributed to the asset or liability under regulation 8(3) or 9(2) below;

“attributed loss”, in relation to any asset or liability, means a loss which is attributed to the asset or liability under regulation 8(3) or 9(2) below;

“current period” has the meaning given by regulation 10 below;

“the cumulative gain” has the meaning given by regulation 10 below;

“the cumulative loss” has the meaning given by regulation 10 below;

“the cumulative taxed gain” has the meaning given by regulation 11 below;

“the cumulative taxed loss” has the meaning given by regulation 11 below;

and any reference to exempt circumstances shall be construed as if it were contained in paragraph 2 of Schedule 15 to the 1993 Act.

Attributed gains and losses: trade assets and liabilities

8.—(1) Paragraph (3) below applies in relation to an existing asset held by a qualifying company—

- (a) if a profit or loss would have accrued to the company if it had disposed of the asset immediately before the company's commencement day for a consideration equal to the asset's basic valuation; and
- (b) that profit or loss would have been taken into account in computing for the purposes of corporation tax the profits and gains of a trade carried on by the company for the accounting period which includes the day immediately before the company's commencement day.

(2) Paragraph (3) below applies in relation to an existing liability owed by a qualifying company—

- (a) if a profit or loss would have accrued to the company—
 - (i) in a case falling within section 153(2)(a), if the liability had been satisfied in full by the company immediately before the company's commencement day, or
 - (ii) in a case falling within section 153(2)(c) or (d), if the right to settlement or the share or shares in question (as the case may be) had been acquired by the company immediately before the company's commencement day for a consideration equal to the consideration for the company becoming subject to the liability, and
- (b) that profit or loss (if it had accrued) would have been taken into account in computing for the purposes of corporation tax the profits and gains of a trade carried on by the company for the accounting period ending immediately before the company's commencement day.

(3) The amount of any such profit or loss as is mentioned in paragraph (1) or (2) above reduced in accordance with paragraph (4) below if applicable, shall be attributed to the asset or liability (as the case may be) and—

- (a) in the case of a profit shall be attributed as a gain, and
- (b) in the case of a loss shall be attributed as a loss.

(4) In any case where unrealised exchange differences which have accrued in respect of the asset or liability are taken into account for the purposes of corporation tax for the accounting period ending immediately before the company's commencement day or any earlier accounting period, the amount of the profit or loss referred to in paragraph (3) above shall be reduced by an amount equal to the amount of those differences.

(5) Section 159 applies for the purposes of this regulation as modified by regulation 6 above.

Attributed gains and losses: regulation 6(3) assets

9.—(1) This regulation applies in relation to any regulation 6(3) asset held by a qualifying company a disposal of which by that company immediately before its commencement day at the asset's market value at that time would have given rise to a chargeable gain or allowable loss, but does not apply in any case where any such disposal of the asset by the company would fall within section 116(10)(b) of the 1992 Act.

(2) Subject to paragraph (3) below, an amount equal to any chargeable gain or allowable loss (as the case may be) which would have accrued to the company had it disposed of the asset as mentioned in paragraph (1) above shall be attributed to the asset and—

- (a) if a chargeable gain would have accrued, it shall be attributed as a gain, and
- (b) if an allowable loss would have accrued, it shall be attributed as a loss.

(3) In any case where—

- (a) the asset was held by a company which at any time before its commencement day was not resident in the United Kingdom, and
- (b) if the asset had been disposed of at that time and a gain had accrued to the company on that disposal, it would not have been included in the company's chargeable profits by virtue of section 10(3) of the 1992 Act,

then for the purposes of paragraph (1) above the company shall be deemed to have acquired the asset, at market value, on the first day on which any gain which would have accrued to the company if the asset had been disposed of on that day (assuming that the disposal gave rise to a gain and disregarding any allowable losses which might be available for deduction under section 8(1) of, or Schedule 7A to, the 1992 Act⁽⁹⁾) would have been included in the company's chargeable profits for the purposes of corporation tax (whether because the company became resident or the asset became situated in the United Kingdom on that day or for any other reason).

(4) In any case where the company referred to in paragraph (1) above acquired the asset on a no gain/no loss disposal, then the reference in paragraph (3) above to a company includes the company from which it acquired the asset, and if that company also acquired the asset on such a disposal, to the company from which it acquired the asset, and so on for a series of such disposals.

(5) The disposal referred to in paragraph (1) above shall be taken not to be a no gain/ no loss disposal, and for the purposes of this regulation a disposal is a no gain/no loss disposal if, by virtue of any enactment specified in section 35(3)(d)⁽¹⁰⁾ of the 1992 Act, neither a gain nor a loss accrues to the person making the disposal.

(6) In any case where section 176 of the 1992 Act would have applied in relation to the disposal referred to in paragraph (1) above if that disposal had actually taken place, that section shall apply for the calculation of any allowable loss for the purposes of that paragraph.

(7) Any expression used in this regulation which is not defined in Chapter II shall have the same meaning as in the 1992 Act.

The cumulative gain and the cumulative loss

10.—(1) Subject to regulation 15, in the case of any existing asset or liability held or owed by a company as respects which an initial exchange gain or loss accrues to the company for an accrual period ("the current period"), there shall be calculated the aggregate amount of initial exchange gains and losses which have accrued as respects the asset or liability in question for all earlier accrual periods and for the current period, and that aggregate amount—

- (a) if positive, shall be the cumulative gain for that asset or liability for the current period, and
- (b) if negative, shall be the cumulative loss for that asset or liability for the current period,

but in cases where that aggregate amount is zero there shall be either a cumulative gain or a cumulative loss equal to zero for the period, according to whether there was a cumulative gain or a cumulative loss of any amount (including zero) for the accrual period immediately preceding the current period.

(2) For the purposes of paragraph (1) above, the amount of any initial exchange gain or loss shall be determined disregarding the following provisions of this Part and the regulation 2(2) provisions.

⁽⁹⁾ Schedule 7A was inserted by section 88(2) of the Finance Act 1993.

⁽¹⁰⁾ Section 35(3)(d) was amended by section 46 of, and paragraph 21(2) of Schedule 9 and paragraph 5(9) of Schedule 17 to, the Finance (No. 2) Act 1992 and by paragraph 2(2) of Schedule 24 to the Finance Act 1994.

The cumulative taxed gain and the cumulative taxed loss

11.—(1) In the case of any asset or liability to which regulation 10 applies, there shall be calculated the aggregate amount of the initial exchange gains and losses which have accrued to the company as respects the asset or liability for accrual periods earlier than the current period, and—

- (a) if that aggregate amount is positive it shall be the cumulative taxed gain for that asset or liability for the current period,
- (b) if it is negative it shall be the cumulative taxed loss for that asset or liability for the current period, and
- (c) if that aggregate amount is zero or, by virtue of regulation 12, there is no aggregate amount, there shall be taken to be a cumulative taxed loss equal to zero for the period.

(2) For the purposes of paragraph (1) above—

- (a) the question whether any initial exchange gain or loss has accrued for any period other than the current period shall be determined in accordance with this Part but as if the regulation 2(2) provisions had never come into force; and
- (b) there shall be disregarded any gain or loss which accrued for an accrual period other than the current period unless—
 - (i) it has been taken into account in computing the profits or gains of the company holding or owing the asset or liability for the purposes of corporation tax for accounting periods ending before the beginning of the current period, or
 - (ii) it would have been so taken into account if the regulation 2(2) provisions had never come into force; or
 - (iii) it is equal to zero.

Assets and liabilities as respects which there is an attributed gain or loss

12.—(1) Subject to regulation 15, in relation to an asset or liability held or owed by a company as respects which—

- (a) there is an attributed gain, E, or an attributed loss, F, and
- (b) an initial exchange gain or loss (“the actual gain or loss”) accrues to the company for the current period,

Table A or Table B below (as appropriate) shall apply and in any case falling within the first column of that Table, the actual gain or loss shall be deemed not to accrue but, subject to any conditions specified in the second column, the gain or loss specified in relation thereto in the third column shall be deemed to accrue and shall be an initial exchange gain or loss (as the case may be) accruing in the place of the actual gain or loss.

(2) For the purposes of paragraph (1)(b) above, the question whether any initial exchange gain or loss has accrued shall be determined disregarding this Part and the regulation 2(2) provisions.

TABLE A

If there is an attributed gain E

Case for the current period	Condition	Deemed gain or loss
1. Cumulative loss B and no cumulative taxed gain or loss	B is greater than E	Loss equal to B — E
2. Cumulative loss B and a cumulative taxed loss C	(i) B is not greater than E and C is greater than zero	(i) Gain equal to C

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Case for the current period	Condition	Deemed gain or loss
	(ii) B is greater than E and C is less than (B — E)	(ii) Loss equal to (B — E) — C
	(iii) B is greater than E and C is greater than (B — E)	(iii) Gain equal to C — (B — E)
3. Cumulative loss B and a cumulative taxed gain D	(i) B is greater than E	(i) Loss equal to (B — E) + D
	(ii) B is not greater than E	(ii) Loss equal to D
4. Cumulative gain A and a cumulative taxed gain D	(i) A is greater than D	(i) Gain equal to A — D
	(ii) D is greater than A	(ii) Loss equal to D — A
5. Cumulative gain A and a cumulative taxed loss C		Gain equal to C + plus; A

TABLE B

If there is an attributed loss F

Case for the current period	Condition	Deemed gain or loss
1. Cumulative gain A and no cumulative taxed gain or loss	A is greater than F	Gain equal to A — F
2. Cumulative gain A and a cumulative taxed gain D	(i) A is not greater than F	(i) Loss equal to D
	(ii) A is greater than F and D is less than (A — F)	(ii) Gain equal to (A — F) — D
	(iii) A is greater than F and D is greater than (A — F)	(iii) Loss equal to D — (A — F)
3. Cumulative gain A and a cumulative taxed loss C	(i) A is greater than F	(i) Gain equal to (A — F) + C
	(ii) A is not greater than F and C is greater than zero	(ii) Gain equal to C
4. Cumulative loss B and a cumulative taxed loss C	(i) B is greater than C	(i) Loss equal to B — C
	(ii) C is greater than B	(ii) Gain equal to C — B
5. Cumulative loss B and a cumulative taxed gain D		Loss equal to B + D

Gains and losses on disposal of assets and liabilities

- 13.—(1) Subject to regulations 14(1) and 15(1), paragraph (2) or (3) below applies where—
- an accrual period ends as respects an existing asset or liability held or owed by a company which is the last accrual period as respects that asset or liability, and
 - there is as respects the asset or liability an attributed gain or loss.
- (2) If there is an attributed gain, E, as respects the asset or liability, then—

- (a) if there is a cumulative gain, A, as respects the asset or liability for the last period, an amount equal to E shall be deemed to be a relevant gain, accruing to the company as respects that asset or liability immediately before the end of the last accrual period;
 - (b) if there is a cumulative loss, B, as respects the asset or liability for the last period, and E exceeds B, an amount equal to the excess shall be deemed to be a relevant gain, accruing to the company as respects that asset or liability immediately before the end of the last accrual period; and
 - (c) if there is neither a cumulative loss nor a cumulative gain as respects the asset or liability for the last period, an amount equal to E shall be deemed to be a relevant gain, accruing to the company as respects that asset or liability immediately before the end of the last accrual period.
- (3) If there is an attributed loss, F, as respects the asset or liability, then—
- (a) if there is a cumulative loss, B, as respects the asset or liability for the last period, an amount equal to F shall be deemed to be a relevant loss, accruing to the company as respects that asset or liability immediately before the end of the last accrual period;
 - (b) if there is a cumulative gain, A, as respects the asset or liability for the last period, and F exceeds A, an amount equal to the excess shall be deemed to be a relevant loss, accruing to the company as respects that asset or liability immediately before the end of the last accrual period; and
 - (c) if there is neither a cumulative loss nor a cumulative gain as respects the asset or liability for the last period, an amount equal to F shall be deemed to be a relevant loss, accruing to the company as respects that asset or liability immediately before the end of the last accrual period.
- (4) In paragraphs (2) and (3) above any reference to a relevant gain or loss is—
- (a) in relation to a regulation 6(3) asset, a chargeable gain or an allowable loss; and
 - (b) in relation to any other asset or any liability, an initial exchange gain or an initial exchange loss;
- and in relation to a regulation 6(3) asset, those paragraphs have effect subject to regulation 14(2) to (11).
- (5) If the asset or liability has in whole or in part been held or owed by the company in exempt circumstances at any time during the last accrual period, then any initial exchange gain or loss which accrues as respects that asset or liability by virtue of paragraph (2) or (3) above shall be treated as not being an exchange gain or loss of a trade or part of a trade for that accrual period, and section 129 shall apply accordingly.
- (6) Subject to paragraph (7) below, if the asset or liability is one as respects which section 127 applies and the debt has been reduced during an accrual period, then—
- (a) the debt shall be treated as if it were two debts (all the terms and conditions of which are the same as those of the actual debt except as to principal) one equal to the amount outstanding at the end of the accrual period and the other equal to the difference between that amount and the amount of the debt at the beginning of the period, and
 - (b) the attributed gain or loss, the cumulative taxed gain or loss and the cumulative gain or loss (if any) which is found as respects the asset or liability for that accrual period shall each be divided proportionately into two parts according to the proportion by which the debt has been reduced, and
 - (c) that part of each of those gains or losses which bears the same proportion to the actual gain or loss as the amount of the debt outstanding at the end of the period bears to the amount of the debt at the beginning of the period shall be taken into account under regulation 12 and the other part shall be taken into account under paragraphs (1) to (5) above.

- (7) Paragraph (6) shall not apply—
- (a) where the amount of the debt increased before the reduction occurred unless the debt was reduced to an amount less than the amount it was before the increase (or if there has been more than one, the first increase) occurred; or
 - (b) as respects the last accrual period for the asset or liability if an initial exchange gain or loss does not accrue (disregarding this Part) as respects the asset or liability for that period.
- (8) Paragraph (6) may apply in relation to an asset or liability for more than one accrual period if the debt is reduced in more than one accrual period.

Further provisions relating to regulation 6(3) assets

14.—(1) Where the asset in question is a regulation 6(3) asset then—

- (a) regulation 13 does not apply if, immediately before the relevant transaction, it was held by the company in exempt circumstances, and
- (b) the following provisions of this regulation shall not apply if section 127 has applied in relation to the asset for any accrual period;

and in this regulation any reference to the relevant transaction is a reference to the transaction by virtue of which the company ceased to be entitled to the asset.

(2) If there was an attributed gain as respects a regulation 6(3) asset and the basic valuation of the asset exceeds its market value at the time of the relevant transaction, then, subject to paragraph (4) below, an amount equal to the amount of the excess shall be set against the amount of the chargeable gain, if any, which (disregarding this paragraph) is deemed to accrue by virtue of regulation 13 and—

- (a) if the two amounts are equal, the chargeable gain shall not be deemed to accrue;
- (b) if the excess is the greater, an allowable loss shall be deemed to accrue to the company at the time of the relevant transaction of an amount equal to the difference between the excess and the amount of that chargeable gain, and that gain shall not be deemed to accrue;
- (c) if the chargeable gain is the greater, it shall be reduced by an amount equal to the amount of the excess.

(3) If there was an attributed loss as respects a regulation 6(3) asset and the market value of the asset at the time of the relevant transaction exceeds the basic valuation of the asset, then, subject to paragraph (4) below, an amount equal to the amount of the excess shall be set against the amount of the allowable loss, if any, which (disregarding this paragraph) is deemed to accrue by virtue of regulation 13 and—

- (a) if the two amounts are equal, the allowable loss shall not be deemed to accrue;
- (b) if the excess is the greater, that loss shall not be deemed to accrue but a chargeable gain shall be deemed to accrue to the company at the time of the disposal of an amount equal to the difference between the excess and the amount of that loss, and
- (c) if the allowable loss is the greater, it shall be reduced by an amount equal to the amount of the excess.

(4) The amount of the excess for the purposes of paragraph (2) or (3) above shall not exceed an amount equal to the aggregate of—

- (a) the cumulative taxed gain or loss, and
- (b) the initial exchange gain or loss (if any) accruing as respects the asset for its last accrual period, and
- (c) any chargeable gain or allowable loss which (disregarding paragraphs (2) and (3)) accrues by virtue of regulation 13;

and for the purposes of paragraph (2) section 176 of the 1992 Act shall apply in relation to that excess as if it were an allowable loss accruing on the relevant transaction (and if apart from this paragraph that section would not apply in relation to that transaction, it shall so apply for this purpose).

(5) In any case where apart from this paragraph an allowable loss would accrue to a company as respects a regulation 6(3) asset by virtue of paragraph (2) above or, if that paragraph does not apply, by virtue of regulation 13 or the amount of the allowable loss is reduced by virtue of paragraph (3) above, then, subject to paragraph (7) below—

- (a) the company may elect, by notice to the inspector within two years of the end of the accounting period in which the disposal in question occurs, that this paragraph shall apply as respects the asset, and
- (b) where such an election is made, an amount equal to the amount of that loss (or that reduced loss) shall be set against the amount of any exchange gains accruing to the company in the accounting period which is or includes the last accrual period or in subsequent accounting periods, and
- (c) if a reduction is made under paragraph (7)(b) below in the amount available under subparagraph (b) above to be set against any gains, the allowable loss or the reduced loss shall be deemed to be equal to the amount of that reduction, and
- (d) if such a reduction is not made, the allowable loss, or reduced loss, shall not be deemed to accrue.

An election under this paragraph shall be irrevocable.

(6) Paragraph (7) below applies in any case where a reorganisation within the meaning of section 127 of the 1992 Act, or any other transaction to which that section applied, took place before the company's commencement day in relation to which—

- (a) the original shares (within the meaning of that section) were or included one or more shares which would not have been qualifying assets had the company been entitled to them on its commencement day or, if the company was still entitled to them on that day, are not qualifying assets; and
- (b) the new holding (within the meaning of that section) was or included an asset—
 - (i) which is a regulation 6(3) asset held by the company (whether or not the company held it in pursuance of the reorganisation or other transaction in question or in pursuance of a subsequent no gain/no loss disposal), or
 - (ii) which would have been a regulation 6(3) asset had the company held it on its commencement day and which has been exchanged for, or converted into, the regulation 6(3) asset which the company held on its commencement day in pursuance of one or more transactions to which section 127 of the 1992 Act applied or one or more no gain/no loss disposals (or both).

In relation to any transaction within section 136 of the 1992 Act, the reference in subparagraph (b) to an exchange shall be construed in accordance with that section.

(7) Where this paragraph applies in relation to a reorganisation within the meaning of section 127 of the 1992 Act, or any other transaction to which that section applied—

- (a) any election under paragraph (5)(a) above must be made in relation to all regulation 6(3) assets derived from shares which—
 - (i) in relation to that reorganisation or transaction are the original shares (within the meaning of that section), and
 - (ii) are held by the company on its commencement day, and
- (b) the amount available to be set against any exchange gains in accordance with paragraph (5) (b) above shall be reduced by an amount equal to the excess (if any) of A over B where—

A is the aggregate of the attributable losses referable to those regulation 6(3) assets which have been found under regulation 9, and

B is the aggregate of those losses which would have been found under regulation 9 if section 127 of the 1992 Act had not applied in relation to the reorganisation or other transaction,

and where the excess is greater than the amount available, that amount shall be taken to be zero, and

- (c) where the company ceases to be entitled to all those regulation 6(3) assets in pursuance of more than one transaction—
- (i) the election must be made in relation to the first of those transactions, and
 - (ii) shall have effect in relation to subsequent relevant transactions relating to any of those assets (notwithstanding paragraph (5)(a) above), and
 - (iii) sub-paragraph (b) above shall apply in relation to each relevant transaction as respects those regulation 6(3) assets which are the subject of that transaction.

(8) Paragraph (6)(b) does not apply if the company acquired the asset in pursuance of a transaction to which section 127 of the 1992 Act did not apply and which is not a no gain/no loss disposal.

(9) For the purposes of this regulation, a transaction is a no gain/no loss disposal if, by virtue of any enactment specified in section 35(3)(d) of the 1992 Act, neither a gain nor a loss accrues to the person transferring the asset in question.

(10) For the purposes of paragraphs (2) to (4) above, the amount of any excess shall be expressed in the nominal currency and shall be translated into sterling using the London closing exchange rate for the day immediately preceding the company's commencement day.

(11) Any expression used in this regulation which is not defined in Chapter II shall be construed as if this regulation were included in the 1992 Act.

Elections to treat pre—commencement day gains and losses as accruing after commencement day over 6 year period

15.—(1) A company may elect by notice to the inspector, before the expiry of the period of 92 days beginning with the company's commencement day or, if later, the expiry of the period of 183 days beginning with 23rd March 1995, that the provisions of this regulation shall apply, subject to paragraph (6) below, in relation to all existing assets and liabilities held or owed by the company, and where an election has effect under this regulation—

- (a) it shall have effect as from the beginning of the company's commencement day, and shall be irrevocable, and
- (b) regulations 10 to 14 shall not apply in relation to any such existing asset or liability.

(2) In any case where an election has effect under this regulation and as respects any existing asset or liability held or owed by the company there is an attributed gain or loss, then for the purposes of Chapter II the amount of that gain or loss shall be divided into 6 equal parts of which—

- (a) each shall be deemed to be an initial exchange gain or loss (as the case may be) accruing as respects that asset or liability, and
- (b) the first shall be deemed to accrue to the company at the beginning of the company's commencement day, and
- (c) subject to paragraph (3) below, the remaining 5 shall be deemed to accrue (severally) to the company at the beginning of each of the following 5 anniversaries of that day.

(3) If the company ceases to be within the charge to corporation tax before the fifth anniversary of its commencement day, any exchange gain or loss which (by virtue of paragraph (2)(c) above) has

not accrued before the company ceases to be within the charge to corporation tax, shall be deemed to accrue to the company immediately before it so ceases.

(4) Any initial exchange gain or loss which is deemed to accrue to the company by virtue of this regulation shall be deemed to accrue for an accrual period which is identical to the accounting period of the company which includes the day on which the gain or loss is treated as accruing.

(5) This regulation and sections 128 and 129 shall continue to apply in relation to an asset or liability as respects which the gain or loss is deemed to accrue by virtue of this regulation notwithstanding a disposal of the asset or liability by the company before the fifth anniversary of the company's commencement day, and for the purposes of those sections the asset or liability shall be deemed to continue to be held or owed until that anniversary by the company for the same purposes as those for which it was held or owed immediately before the disposal.

(6) An election under this regulation shall not apply in relation to a regulation 6(3) asset or an asset which is held by the company on its commencement day in exempt circumstances.

Set off of certain pre—commencement losses against exchange gains

16.—(1) A company may elect by notice to the inspector, before the expiry of the period of 92 days beginning with the company's commencement day or, if later, the expiry of the period of 183 days beginning with 23rd March 1995, that available losses shall be available to be set against the company's exchange gains in accordance with paragraphs (9) to (11) below, and an election under this paragraph—

- (a) may be made in relation to the whole of the available losses or such amount, less than the whole of the available losses, as may be specified in the election; and
- (b) shall be irrevocable.

(2) Subject to paragraphs (4) to (8) below, in this regulation “available losses”, in relation to any company, means allowable losses which—

- (a) accrued to the company before its commencement day at a time when it was within the charge to corporation tax, and
- (b) accrued either—
 - (i) on the disposal of assets which if they had not been disposed of before the company's commencement day would have been qualifying assets, or
 - (ii) by virtue of section 143 of the 1992 Act⁽¹¹⁾ in respect of a currency contract, a currency option, an interest rate contract or an interest rate option, (and this provision shall be construed as one with Chapter II of Part IV of the Finance Act 1994⁽¹²⁾),other than losses which are attributable to assets which would not have been qualifying assets if they had been held by the company on its commencement day.

(3) For the purposes of paragraph (2) above, a loss is attributable to an asset (“the first asset”) if and to the extent that—

- (a) it accrued on the disposal of another asset by the company (“the second asset”), and
- (b) the first asset was the subject of a reorganisation or other transaction to which section 127 of the 1992 Act applied, and
- (c) either—
 - (i) the second asset was held by the company in pursuance of that reorganisation or other transaction, or

⁽¹¹⁾ Section 143 was amended by section 95 of the Finance Act 1994.

⁽¹²⁾ 1994 c. 9.

- (ii) the second asset was held by the company in pursuance of a transaction which is the last in a series of transactions, the first of which is the transaction referred to in sub-paragraph (b) above, and of all of which are either transactions to which section 127 of the 1992 Act applied or no gain/ no loss disposals (within the meaning of regulation 14(9)) so that the loss has been calculated by reference to the acquisition or other costs of the first asset.

References in this paragraph to a reorganisation or other transaction to which section 127 of the 1992 Act applied include a reference to any reorganisation or other transaction to which that section would have applied but for section 116 of that Act.

- (4) A loss which has accrued to a company on the disposal of an asset is not an available loss if—
 - (a) had a gain instead accrued on that disposal, the company would not have been chargeable to corporation tax in respect of that gain; or
 - (b) it has been deducted, or is deductible, under section 8(1) of, or Schedule 7A to, the 1992 Act from any chargeable gains which have accrued to the company in accounting periods ending before the company's commencement day.
- (5) Paragraph (6) below applies in any case where—
 - (a) an allowable loss has accrued to a company on the disposal of an asset, and
 - (b) the asset was held by the company at any time when it was not resident in the United Kingdom, and
 - (c) if the asset had been disposed of at that time and a gain had accrued to the company on that disposal, it would not have been included in the company's chargeable profits by virtue of section 10(3) of the 1992 Act.
- (6) Where this paragraph applies—
 - (a) there shall be computed the amount of the allowable loss (if any) which would have accrued to the company on the disposal if it had acquired the asset, at market value, on the first day on which any gain which would have accrued to the company if the asset had been disposed of on that day (assuming that the disposal gave rise to a gain and disregarding any allowable losses which might be available for deduction under section 8(1) of or Schedule 7A to the 1992 Act) would have been included in the company's chargeable profits for the purposes of corporation tax (whether because the company became resident or the asset became situated in the United Kingdom on that day or for any other reason); and
 - (b) if there is neither a loss nor a gain or there is a gain on that computation, there shall be taken to be a loss of zero;

and the available losses shall be reduced by an amount equal to the excess of the amount of the allowable loss referred to in paragraph (5)(a) above over the amount of the loss found under paragraph (a) or (b) above.

(7) In any case where the company acquired the asset on a no gain/no loss disposal, then references in paragraphs (5)(b) and (c) and (6)(a) above to a company include the company from which it acquired the asset, and if that company also acquired the asset on such a disposal, to the company from which it acquired the asset, and so on for a series of such disposals.

For the purposes of this paragraph an asset is acquired on a no gain/no loss disposal if, by virtue of any enactment specified in section 35(3)(d) of the 1992 Act, neither a gain nor a loss accrues to the person making the disposal.

(8) Where losses have accrued to a company for accounting periods ending before the company's commencement day (but after the last accounting period, if any, as respects which the company did not have a surplus of allowable losses available to be carried forward to the next accounting

period under section 8(1)(b) of or Schedule 7A to the 1992 Act) in respect of assets falling within paragraph (2)(b) above and also in respect of other assets, the losses accruing in respect of those other assets shall not be available losses, and for the purposes of determining in such a case which losses are available and which are not—

- (a) losses which have accrued as respects assets falling within paragraph (2)(b) above shall be taken to have been set off first against gains accruing on such assets, and
- (b) losses which have accrued as respects other assets shall be taken to have been set off first against gains accruing on such other assets.

(9) Losses as respects which an election made by a company has effect under this regulation shall be set against any exchange gain which accrues to the company—

- (a) in an accounting period beginning on or after the company's commencement day, and
- (b) either—
 - (i) in respect of a regulation 6(3) asset or an asset which would be a regulation 6(3) asset if it were an existing asset held by the company; or
 - (ii) in respect of a currency contract which before the company's commencement day (assuming the contract to have been in existence then) would have fallen within section 143 of the 1992 Act;

and losses shall be set against gains accruing in earlier accounting periods rather than later periods.

(10) Where a loss is to be set against a gain under this regulation the amount of the loss shall be deducted from the gain before the application of section 128(4) or 129(2) (whichever is applicable).

(11) Any reference in paragraphs (1), (9) and (10) above to an exchange gain in relation to a company is a reference to a gain which has accrued (or been deemed to accrue) to the company for an accrual period as respects any asset, liability or contract after regulations 12 and 13 and the regulation 2(2) provisions have applied (if they are applicable) as respects the asset, liability or contract for that accrual period; but computations under regulations 12 and 13 shall be made disregarding any set—off under this regulation.

(12) Where allowable losses have accrued on disposals occurring at different times, and the election is made in relation to an amount rather than to the whole of the allowable losses, the losses constituting that amount shall be taken for all purposes to be those losses accruing on earlier disposals rather than those accruing on later disposals, and any allowable losses which constitute an amount specified in an election under this regulation shall not be available for deduction under section 8(1) of, or Schedule 7A to, the 1992 Act.

(13) In this regulation—

- (a) any reference to a company's commencement day in relation to any company which, by virtue of regulation 3, has more than one commencement day, is a reference to the first such day; and
- (b) any expression which is not defined in Chapter II shall have the same meaning as in the 1992 Act.

PART IV

PRE—COMMENCEMENT GAINS AND LOSSES: DEBTS OF FIXED AMOUNTS

Application, etc. of Part IV

17.—(1) This Part applies in relation to an existing asset or liability held or owed by a company which immediately before its commencement day was within the charge to corporation tax where—

- (a) the asset or liability is the right to settlement of a debt or the duty to settle a debt which in either case is fixed (within the meaning of regulation 3) as to its amount or its term (or both), and
- (b) any exchange difference accruing to the company on a disposal or settlement by the company of the asset or liability immediately before the company’s commencement day would not have been taken into account, or would not have been wholly taken into account, for the purposes of corporation tax in computing the company’s profits and gains of that accounting period or would not be so taken into account if the company had been within the charge to corporation tax at the time the gain or loss accrued.

(2) For the purposes of the Tables set out in regulation 20, all amounts shall be taken to be positive, but for all other computations for the purposes of this Part, an amount which is a gain shall be taken to be a positive figure and an amount which is a loss shall be taken to be a negative figure.

(3) Regulations 18 to 20 have effect subject to regulations 21 and 22, and in regulations 18, 19 and 21 “the current period” has the same meaning as in regulation 20.

Post—commencement net gains and losses and pre—commencement gains and losses

18.—(1) Where this Part applies, there shall be calculated the aggregate amount of the initial exchange gains and losses which have accrued as respects the asset or liability for all accrual periods including the current period, and that aggregate amount is referred to in this Part, if positive, as “the post—commencement net gain” and if negative as “the post—commencement net loss”.

(2) Where the aggregate amount found under paragraph (1) above for all accrual periods including the current period is zero, then—

- (a) if the aggregate amount for all accrual periods preceding the current period was a post—commencement net gain, there shall be a post—commencement net gain equal to zero; and
- (b) if the aggregate amount for all accrual periods preceding the current period was a post—commencement net loss, or there is no such aggregate amount, there shall be a post—commencement net loss equal to zero.

(3) Where this Part applies, there shall be calculated the aggregate amount of the exchange differences which have accrued as respects the asset or liability for accounting periods before the company’s commencement day, disregarding realised exchange differences and any unrealised exchange difference which has been taken into account in computing the profits or gains of the company for the purposes of corporation tax for any such accounting period, and the result is referred to in this Part, if positive, as “the pre—commencement gain” and if negative as “the pre—commencement loss”.

(4) In any case where the asset or liability is held at the end of the current period for the purposes of a trade or part of a trade the local currency of which is not sterling, that local currency shall be used in making the calculations required by paragraphs (1), (2) and (3) above.

(5) For the purposes of paragraph (1) above, the question whether any initial exchange gain or loss has accrued, and if so its amount, shall be determined disregarding regulations 20 to 22 and the regulation 2(2) provisions.

Overall exchange gains and losses and cumulative taxed gains and losses

19.—(1) Where this Part applies, there shall be calculated the aggregate amount of—

- (a) the pre—commencement gain or loss, and
- (b) the post—commencement net gain or loss.

(2) The aggregate amount found in accordance with paragraph (1) above is referred to in this Part, if positive, as “the overall exchange gain”, Z, and if negative as “the overall exchange loss”, W, and if the aggregate is zero there shall be an overall exchange loss of zero.

(3) In the case of any asset or liability to which this Part applies and as respects which an initial exchange gain or loss has accrued for the current period, there shall be calculated the aggregate amount of the initial exchange gains and losses which have accrued to the company as respects the asset or liability for accrual periods earlier than the current period, and—

- (a) if that aggregate amount is positive it shall be the cumulative taxed gain, G, for that asset or liability for the current period,
- (b) if it is negative it shall be the cumulative taxed loss, L, for that asset or liability for the current period, and
- (c) in cases where that aggregate amount is zero there shall be taken to be a cumulative taxed loss equal to zero for the period.

(4) For the purposes of paragraph (3) above—

- (a) the question whether any initial exchange gain or loss has accrued for the current period shall be determined disregarding regulations 20 to 22 and the regulation 2(2) provisions;
- (b) the question whether any initial exchange gain or loss has accrued for any period other than the current period shall be determined in accordance with this Part but as if the regulation 2(2) provisions had never come into force; and
- (c) there shall be disregarded any gain or loss which has accrued for an accrual period other than the current period unless—
 - (i) it has been taken into account in computing the profits or gains of the company holding or owing the asset or liability for the purposes of corporation tax for accounting periods ending before the beginning of the current period, or
 - (ii) it would have been so taken into account if the regulation 2(2) provisions had never come into force; or
 - (iii) it is equal to zero.

Deemed gains and losses

20. Table C or D set out below (as appropriate) shall apply in relation to an asset or liability as respects which an initial exchange gain or loss accrues to a company for an accrual period (“the current period”), determined disregarding this regulation and regulations 21 and 22 and the regulation 2(2) provisions, and as respects which there is—

- (a) a post—commencement net gain, X, or
- (b) a post—commencement net loss, Y,

and if the primary condition and the secondary condition (if any) are satisfied, any initial exchange gain or loss which (apart from this regulation) would accrue to the company for the current period (“the actual gain or loss”) shall be deemed not to accrue but the gain or loss specified in the third column of the Table in relation to those conditions shall be deemed to accrue and shall be an initial exchange gain or loss (as the case may be) accruing in the place of the actual gain or loss.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

TABLE C

If there is a post—commencement net gain X

Primary condition	Secondary condition	Deemed gain or loss
1. Overall exchange gain Z and no cumulative taxed gain or loss	X is greater than Z	Gain equal to Z
2. Overall exchange gain Z and a cumulative taxed gain G	(i) Z is not greater than G and X is greater than Z	(i) Loss equal to $G - Z$
	(ii) Z is greater than G and X is greater than Z	(ii) Gain equal to $Z - G$
	(iii) X is not greater than Z nor greater than G	(iii) Loss equal to $G - X$
	(iv) X is not greater than Z but is greater than G	(iv) Gain equal to $X - G$
3. Overall exchange gain Z and a cumulative taxed loss L	(i) X is greater than Z	(i) Gain equal to $Z + L$
	(ii) X is not greater than Z	(ii) Gain equal to $X + L$
4. Overall exchange loss W and no cumulative taxed gain or loss		Loss equal to zero
5. Overall exchange loss W and a cumulative taxed gain G		Loss equal to G
6. Overall exchange loss W and a cumulative taxed loss L		Gain equal to L

TABLE D

If there is a post—commencement net loss Y

Primary condition	Secondary condition	Deemed gain or loss
1. Overall exchange loss W and no cumulative taxed gain or loss	Y is greater than W	Loss equal to W
2. Overall exchange loss W and a cumulative taxed loss L	(i) W is not greater than L and Y is greater than W	(i) Gain equal to $L - W$
	(ii) W is greater than L and Y is greater than W	(ii) Loss equal to $W - L$
	(iii) Y is not greater than W nor greater than L	(iii) Gain equal to $L - Y$
	(iv) Y is not greater than W but is greater than L	(iv) Loss equal to $Y - L$

Primary condition	Secondary condition	Deemed gain or loss
3. Overall exchange loss W and a cumulative taxed gain G	(i) Y is greater than W	(i) Loss equal to W + G
	(ii) Y is not greater than W	(ii) Loss equal to Y + G
4. Overall exchange gain Z and no cumulative taxed gain or loss		Loss equal to zero
5. Overall exchange gain Z and a cumulative taxed loss L		Gain equal to L
6. Overall exchange gain Z and a cumulative taxed gain G		Loss equal to G

Modification of regulations 18 to 20 where nominal amount of debt increases after commencement

21.—(1) This regulation applies where the existing asset or liability to which this Part applies is the right to settlement of a debt, or a duty to settle a debt, the nominal amount of which is or has been increased on or after the company’s commencement day, and in this regulation “the original debt” means the debt as at the beginning of that day.

(2) Where this regulation applies—

- (a) the calculations required to be made by regulations 18 and 19 shall first be made in relation to the original debt (on the assumption that it had not been increased on or after the company’s commencement day), and there shall be found the amount of any deemed gain or loss under regulation 20(1) basing the computations on the amounts found in accordance with those calculations, and
- (b) there shall then be calculated the amount of the initial exchange gain or loss (if any) which would have accrued as respects the asset or liability if—
 - (i) Parts I to III of these Regulations were disregarded, and
 - (ii) the company had become entitled to the asset or subject to the liability at the beginning of its commencement day, and
 - (iii) the amount of the debt at the beginning of the company’s commencement day had been zero,

and the amount of any such gain or loss is referred to in this regulation as the “notional gain” or the “notional loss”, as the case may be.

(3) The amount of the notional gain or loss shall be aggregated with the amount of the deemed gain or loss found, in accordance with paragraph (2)(a) above, under regulation 20(1) and—

- (a) if that aggregate amount is positive it shall be deemed to be the initial exchange gain accruing to the company as respects the asset or liability for the current period;
- (b) if that aggregate amount is negative it shall be deemed to be the initial exchange loss accruing to the company as respects the asset or liability for the current period;
- (c) if that aggregate amount is zero there shall be deemed to be neither an initial exchange gain nor an initial exchange loss accruing to the company as respects the asset or liability for the current period;

and any initial exchange gain or loss which disregarding this Part would accrue to the company as respects the asset or liability for the current period shall (in accordance with regulation 20(1)) be deemed not to accrue.

(4) Where this regulation applies, regulation 20(1) shall have effect (in accordance with paragraph (2) above) with the omission of the words “and shall be an initial exchange gain or loss (as the case may be) accruing in the place of the actual gain or loss”.

(5) Where the debt in question is not wholly repaid at one time, then for the purposes of this Part any amount repaid after commencement shall be taken to reduce the amount of the original debt first, before any amount by which that debt has been increased is reduced.

Replacement loans

22.—(1) In any case where—

- (a) a debt to which this Part applies otherwise than by virtue of this regulation (“the original debt”) is settled before final settlement of the debt is due, and
- (b) the company owing the original debt incurs another debt (“the new debt”) not earlier than 30 days before the day on which the original debt is settled and not later than 30 days after that day,

then, subject to paragraphs (3) to (7) below, regulations 18 to 21 shall continue to apply in relation to the new debt as if it were the original debt (disregarding regulation 17(1)(b)) except that regulation 21 shall not apply in relation to any debt as respects which paragraph (5) below applies.

(2) Any reference in this regulation to the settlement amount is a reference to the amount of the settlement referred to in paragraph (1)(a) above.

(3) For the purposes of this regulation—

- (a) any debt due for goods or services supplied to or by the company in the course of its trade shall be disregarded for the purposes of paragraph (1)(a) and (b) above;
- (b) a debt shall be disregarded for the purposes of paragraph (1)(b) above unless—
 - (i) it is held or owed for the purposes of a trade or part of a trade and is in a currency other than the local currency of the trade or part; or
 - (ii) it is not held for the purposes of a trade or part of a trade and is in a currency other than sterling;
 (whether or not it is the same as the currency of the original debt);

and paragraph (1) above shall not apply in relation to any person who is party to the agreement under which the new debt is incurred if he was not party to the agreement under which the original debt was incurred.

(4) In any case where the settlement amount exceeds the amount of the new debt at the time it is incurred, then, for the purposes of computing the amount of any post— commencement net exchange gain or loss and the overall exchange gain or loss for the new debt, the amount of any initial exchange gain or loss and any exchange difference which has accrued as respects the original debt shall be proportionately reduced.

(5) In any case where the amount of the new debt, at the time it is incurred, exceeds the settlement amount, then for any accrual period for the new debt—

- (a) there shall be found the amount of any initial exchange gain or loss which would have accrued as respects the new debt in accordance with this Part if the amount of the new debt at the time it was incurred had been equal to the settlement amount;
- (b) there shall be found the amount of any initial exchange gain or loss which would have accrued as respects the new debt in accordance with Chapter II—
 - (i) if regulations 18 to 21 did not apply, and
 - (ii) the amount of the new debt at the time it was incurred had been equal to the amount by which it exceeds the settlement amount;

- (c) the amounts found in accordance with sub-paragraphs (a) and (b) above shall be aggregated and the aggregate amount so found—
 - (i) if positive shall be the initial exchange gain accruing to the company as respects the new debt for the accrual period in question, and
 - (ii) if negative shall be the initial exchange loss accruing to the company as respects the new debt for the accrual period in question;and any initial exchange gain or loss which would apart from this paragraph so accrue shall be deemed not to accrue.
- (6) In any case where the amount of the new debt, at the time it is incurred, exceeds the settlement amount, then—
 - (a) if that debt is partly repaid at any time, the repayment shall be taken into account so as to reduce the amount of the debt first for the purposes of paragraph (5)(b) above and only secondly for the purposes of paragraph (5)(a) above, and
 - (b) if that debt is increased at any time, the increase shall be taken into account so as to increase the amount of the debt for the purposes of paragraph (5)(b) above unless the debt has been reduced to an amount less than the settlement amount in which case—
 - (i) the increase shall first increase the amount of the debt for the purposes of paragraph (5)(a) above, but not so as to increase the debt for those purposes beyond the settlement amount, and
 - (ii) if the increase exceeds the amount by which the debt was less than the settlement amount, the amount of that excess shall increase the amount of the debt for the purposes of paragraph (5)(b).
- (7) For the purposes of paragraph (8) below “the relevant time” means the time when the terms of the original debt required it to be repaid.
- (8) Regulations 18 to 21, and paragraphs (4) to (6) above, shall not apply to the new debt in relation to any time after the relevant time and accordingly, if the new debt has not been wholly repaid by the relevant time, then—
 - (a) for the purposes of this Part, and of Chapter II as it applies for the purposes of any calculation required to be made in accordance with any provision of this Part, the company shall be deemed to cease to be entitled or subject to the debt at the relevant time, and
 - (b) for the purposes of Chapter II as it applies otherwise than in accordance with sub-paragraph (a) above, the company shall be deemed to become entitled or subject to the new debt at the relevant time, to the extent that the new debt has not been repaid at that time.
- (9) This regulation shall also apply, subject to any necessary modifications—
 - (a) where part only of the original debt is settled before final settlement of that part is due, and not earlier than 30 days before the day it is settled and not later than 30 days after that day the company owing that debt incurs another debt (so that where this paragraph applies, this Part shall continue to apply to the old debt and to the new debt); and
 - (b) where a debt to which this Part applies by virtue of this regulation is settled (in whole or in part), and not earlier than 30 days before the day on which it is settled and not later than 30 days after that day the company owing that debt incurs another debt.

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15th December 1994

Derek Conway
Andrew Mitchell
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 23rd March 1995, apply to assets, currency contracts and liabilities held or owed by a company immediately before the provisions relating to exchange gains and losses contained in Chapter II of the Finance Act 1993 first apply as respects that company.

These Regulations consist of four Parts:

- Part I which consists of matters of general application;
- Part II which contains miscellaneous provisions relating to the deferment of the commencement day in certain cases, to the determination of exchange rates to be used at commencement, and to basic valuations;
- Part III which contains provisions relating to gains and losses which have accrued, as respects capital assets and assets and liabilities within Case I of Schedule D, to a company before its commencement date and which would have been taken into account for tax purposes if Chapter II of Part II of the Finance Act 1993 had not been enacted; and
- Part IV, which contains provisions relating to gains and losses which have accrued, as respects debts of fixed amounts, to a company before its commencement date.

Regulation 1 provides for citation, commencement and interpretation.

Regulation 2 provides that where calculations need to be made both under these Regulations and under certain other provisions which affect the amount of an exchange gain or loss, the calculations under these Regulations are to be made first.

Regulation 3 allows the commencement day as respects certain fluctuating debts to be deferred for up to 6 years in cases where exchange differences which accrued before the company's (und deferred) commencement day were not previously recognised for tax purposes.

Regulation 4 prevents any exchange difference accruing on a debt which is irrecoverable at the company's commencement day from being brought into any computation under Chapter II of Part II of the Finance Act 1993.

Regulation 5 modifies section 150 of the Finance Act 1993 as it applies to determine the exchange rate to be used in relation to the first translation time for an existing asset, liability or currency contract.

Regulation 6 provides, subject to certain specified exceptions, that the basic valuation of an existing asset or liability is its value immediately before the company's commencement day.

Regulation 7 provides for interpretation of terms used in Part III of the Regulations.

Regulation 8 provides for the pre—commencement gains or losses to be computed and attributed to certain trading assets and liabilities.

Regulation 9 provides for pre—commencement gains or losses to be computed and attributed to assets formerly within the capital gains tax regime.

Regulations 10 and 11 provide for the calculation of aggregate amounts of exchange gains and losses for the purposes of regulations 12 and 13.

Regulation 12 provides for a gain or loss attributed to an asset or liability under regulation 8 or 9 (the “attributed gain or loss”) to be set off on a cumulative basis against amounts which accrue after the company's commencement day.

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Regulation 13 applies where the whole or any part of an attributed gain or loss has not been set against exchange gains or losses under regulation 12, and provides for it to be brought into account for tax purposes, in whole or in part, as an exchange gain or loss or as a capital gain or loss.

Regulation 14 makes provision for the amount which would otherwise be taxed or relieved as a chargeable gain or allowable loss under regulation 13 to be reduced in certain circumstances, and permits a company to elect that, subject to certain conditions, an amount which would otherwise be treated as an allowable loss should instead be set against exchange gains of the accounting period in which the asset is disposed of and of subsequent accounting periods.

Regulation 15 enables a company to elect that regulations 10 to 14 shall not apply to any of its existing assets and liabilities (other than assets falling within regulation 6(3)). Where an election is made the attributed amount found under regulation 8 is divided into six equal parts which are treated as exchange gains or losses arising in each of the six years following commencement.

Regulation 16 permits a company to elect that certain allowable losses realised on certain classes of assets prior to the company's commencement day should be set against exchange gains accruing after commencement on assets of the same class and on certain currency contracts.

Regulation 17 provides for Part IV of the Regulations to apply to debts of fixed amount and term.

Regulations 18 and 19 provide for the calculation for the purposes of regulation 20 of aggregate amounts of exchange differences accruing before and after commencement.

Regulation 20 provides that in relation to certain debts on which exchange differences were not previously recognised for tax, exchange gains or losses which accrue following the company's commencement day are to be compared to the overall exchange differences which have accrued since the date the asset or liability came into existence, and the exchange gain or loss of each accrual period is to be adjusted to prevent the post— commencement net exchange gain or loss from exceeding the overall exchange gain or loss over the life of the asset or liability.

Regulation 21 applies where the amount of a debt increases after the company's commencement day. It substitutes for the gain or loss otherwise deemed to accrue in accordance with regulation 20 another gain or loss equal to the aggregate of:

- an amount equal to the exchange gain or loss which would have accrued, after applying regulation 20, had the amount of the debt not increased, and
- an amount equal to the exchange gain or loss which would accrue, disregarding regulation 20, had the amount by which the debt increased been a separate debt.

Regulation 22 provides for regulations 18 to 21 to continue to apply where loans are repaid and replaced within a specified period.