
STATUTORY INSTRUMENTS

1994 No. 3226

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

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⁽¹⁾ 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⁽²⁾.

(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)—

(1) 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).

(2) 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.

- (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.