
STATUTORY INSTRUMENTS

1994 No. 3230

INCOME TAX

The Local Currency Elections 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 93(1) and (6), 94(1), (2), (3) and (11) and 95(1), (2) and (3) of the Finance Act 1993⁽¹⁾, hereby make the following Regulations:

Citation and commencement

- 1.—(1) These Regulations may be cited as the Local Currency Elections Regulations 1994.
(2) These Regulations shall come into force on 23rd March 1995.

Definitions

2. In these Regulations, except where the context otherwise requires—
- “the 1993 Act” means the Finance Act 1993;
 - “accounts” in relation to a company, means—
 - (i) the annual accounts of the company prepared in accordance with Part VII of the Companies Act 1985⁽²⁾, or
 - (ii) if the company is not required to prepare such accounts, the accounts which it is required to keep under the law of its home State or, if it is not so required to keep accounts, such of its accounts as most closely correspond to accounts which it would have been required to prepare if the provisions of that Part applied to the company;
 - “commencement day”, in relation to any company, means the first day of the company’s first accounting period beginning on or after 23rd March 1995;
 - “local currency” means a currency other than sterling;
 - “overseas branch” means a branch outside the United Kingdom;
 - “specified”, in relation to an election, means specified in the election;

(1) 1993 c. 34.
(2) 1985 c. 6.

and references to an election are references to an election under regulation 3 or 4.

Elections for trades

3.—(1) Subject to the following provisions of these Regulations, a company carrying on a trade may by notice given to the inspector elect to have the basic profits and losses of the trade computed and expressed for the purposes of corporation tax in a specified local currency.

(2) A company may not make an election under this regulation for a trade for an accounting period if there is in force an election under regulation 4 for that accounting period and any part of that trade.

Elections for part trades

4.—(1) Subject to the following provisions of these Regulations, a company carrying on a trade may by notice given to the inspector elect to have the basic profits and losses of a specified part of the trade computed and expressed for the purposes of corporation tax in a specified local currency.

(2) A company may make an election under this regulation—

- (a) for a trade which it carries on, wholly or in part, through one or more overseas branches, or
- (b) for a ring fence trade as respects which the condition mentioned in section 94A(2) of the 1993 Act⁽³⁾ is fulfilled,

but not in relation to any other trade (and accordingly an election under paragraph (1) of this regulation may, subject to these Regulations, be made for a part of the trade which is carried on in the United Kingdom).

(3) An election under this regulation may specify different currencies for different parts of the trade but if the company makes an election for each part of the trade, at least two currencies must be specified.

(4) Where a company makes more than one election for different parts of one trade, paragraph (3) above shall apply cumulatively to the elections.

(5) Where a company carries on part of a trade through two or more branches situated in the same country, an election under paragraph (2)(a) above for that part of the trade must specify the same currency to be used for all those branches, and for the purposes of this paragraph the United Kingdom shall be taken to be one country.

(6) In any case where a company makes an election under this regulation for one or more parts of a trade but not for all the parts of the trade, the basic profits and losses of any part of the trade for which there is no election shall be computed and expressed for the purposes of corporation tax in sterling.

(7) A company may not make an election under this regulation for part of a trade for an accounting period if there is in force an election under regulation 3 for that trade and that accounting period.

Factors affecting determination of local currency

5.—(1) This regulation applies in relation to any election made by a company for the purpose of determining what currency (if any) may be specified in the election.

(2) A currency may be specified in an election as a local currency if, but only if—

- (a) it is the currency of the primary economic environment in which the trade or part of the trade is carried on, and
- (b) one of the conditions set out in paragraphs (3), (4), (5) and (6) below is satisfied.

(3) Section 94A was inserted by section 136(1) of the Finance Act 1994 (c. 9).

(3) A currency may be specified in any election as a local currency if the accounts are prepared in that currency in accordance with normal accountancy practice.

(4) A currency may be specified in an election made by a company resident in the United Kingdom as a local currency if the accounts, so far as they relate to the trade or part in question, are prepared from the financial statements relating to the trade or part using the closing rate/net investment method, and those statements are prepared in that currency.

The reference above to the closing rate/net investment method is a reference to that method as described under the title “Foreign currency translation” in the Statement of Standard Accounting Practice issued in April 1983 by the Institute of Chartered Accountants in England and Wales.

(5) A currency may be specified in an election made by a company not resident in the United Kingdom as a local currency if it is the currency in which the financial statements relating to that trade or part are prepared in accordance with normal accountancy practice.

(6) Subject to paragraph (7) below, a currency may be specified as a local currency in any election which is not for a trade or part of a trade carried on in the United Kingdom if—

- (a) the company making the election was within the charge to corporation tax as respects the trade or part in question immediately before its commencement day, and
- (b) for accounting periods ending within the two years before that day, the basic profits and losses of the trade or part were computed and expressed for corporation tax purposes in that currency.

(7) An election made by virtue of paragraph (6) above shall be of no effect unless it is made before the expiry of the period of 92 days beginning with the company’s commencement day.

Factors relevant to the determination of the primary economic environment

6. In determining whether a currency is the currency of the primary economic environment in which a trade or any part of a trade is carried on, regard shall be had to all relevant circumstances including in particular (in so far as they may be relevant) the following factors, that is to say—

- (a) the currency in which the net cash flows of the trade or part are generated or expressed in the relevant accounting records;
- (b) the currency in which the company manages the profitability of the trade or part so far as it is affected by currency exposure;
- (c) in the case of a company which is resident in the United Kingdom, the currency in which the company’s share capital and its reserves are denominated;
- (d) the currency to which the company, or, where the trade or part is carried on through a branch, that branch, is exposed in its long term capital borrowing (of any kind whatsoever);
- (e) the currency which is the generally recognised currency in which trading in the principal market of the trade or part is carried on.

Provisions supplementary to regulations 4, 5 and 6

7.—(1) Where the election specifies more than one currency for parts of a trade, regulations 4, 5 and 6 shall apply separately in relation to each currency and each part of the trade.

(2) In regulations 4, 5 and 6, except where the context otherwise requires—

- (a) any reference to accounts, in relation to an election, is a reference to the accounts of the company making the election for the accounting period for which the election is to have effect; and

- (b) any reference to relevant accounting records, in relation to an election, is a reference to the accounting records, relating to the trade or that part of a trade to which the election refers, for the accounting period for which the election is to have effect.

Determination of rate of exchange

8.—(1) A company may in an election for a trade or part of a trade state that for accounting periods for which the election has effect an average arm's length exchange rate will be used in translating the basic profits or losses of the trade or part into sterling for the purposes of section 93(4) or 94(8) of the 1993 Act (as the case may be).

(2) In paragraph (1) above—

“arm's length exchange rate” means such exchange rate as might reasonably be expected to be agreed between persons dealing at arm's length; and

“average arm's length exchange rate” means the rate which represents the average of the arm's length exchange rates for all the days in the accounting period in question.

(3) Subject to paragraph (4) below, where an election contains a statement in accordance with paragraph (1) above, the average arm's length exchange rate shall be used in translating the basic profits or losses of the trade or part into sterling for the purposes of section 93(4) or 94(8) of the 1993 Act (as the case may be) for all accounting periods for which the election has effect.

(4) The company may by notice given to the inspector terminate the statement referred to above with effect from the first day of the first accounting period beginning on or after the date of the notice.

Periods for which elections have effect

9.—(1) Subject to the following provisions of these Regulations, an election for a trade or part of a trade shall have effect as respects that trade or part for all accounting periods beginning on or after the date on which the election is made.

(2) Subject to the following provisions of these Regulations, an election for a trade or part of a trade made by a company which, as respects that trade or part, is within the charge to corporation tax immediately before its commencement day shall have effect as respects that trade or part of all accounting periods beginning on or after that day if the election is made before the end of the period of 92 days beginning with that day.

(3) Subject to the following provisions of these Regulations, an election for a trade or part of a trade made by a company which, as respects that trade or part, is not within the charge to corporation tax immediately before its commencement day shall have effect as respects that trade or part for all accounting periods beginning on or after the first day on which it comes within that charge as respects that trade or part if the election is made before the end of the period of 92 days beginning with that first day.

Information to be submitted with elections and effectiveness of elections

10.—(1) An election by a company for a trade or part of a trade shall include—

(a) a statement of the reasons why the company believes that such of the requirements of these Regulations as are applicable to the election will be met as respects that trade or part for the first accounting period of the company for which the election is to have effect; and

(b) particulars of the nature of the trade or part and the place where it is carried on.

(2) An election which does not comply with paragraph (1) above and regulation 5(7) (if applicable) shall be of no effect.

(3) Without prejudice to paragraphs (1) and (2) above, an election made by a company for a trade or part of a trade shall be of no effect if the requirements of regulation 5 (so far as they are applicable

to the election) are not complied with as respects that trade or part for the first accounting period of the company for which the election is intended to have effect.

(4) If at any time in an accounting period of the company, the currency specified in an election made by the company ceases to be eligible to be specified in an election as the local currency of the trade or part, the election shall cease to have effect at the end of that accounting period.

(5) In any case where an election has ceased to have effect by virtue of paragraph (4) above, the company shall notify the inspector in writing of that fact as soon as is reasonably practicable after becoming aware of it.

(6) In a case where paragraph (4) above applies the inspector may notify the company in writing that by virtue of that paragraph the election is no longer effective.

15th December 1994

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

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 23rd March 1995, make provision for the basic profits or losses of a trade or part trade to be computed and expressed for corporation tax purposes in a currency other than sterling where a company so elects and where certain conditions are satisfied.

Regulation 1 provides for citation and commencement, and regulation 2 contains definitions.

Regulation 3 permits a company to elect to have the basic profits and losses of a trade computed and expressed for corporation tax purposes in a currency other than sterling. Regulation 4 contains corresponding provisions for the basic profits and losses of different parts of a trade.

Regulation 5 prescribes the conditions which must be fulfilled in order for a particular currency to be specified in an election. Regulation 6 specifies factors to be taken into account in determining whether one of these conditions — that the currency is the currency of the “primary economic environment” of the trade or part trade — is satisfied. Regulation 7 contains supplementary provisions.

Regulation 8 provides that an average exchange rate may be used for translating basic profits or losses into sterling provided that this is specified in the election.

Regulations 9 and 10 provide rules for determining the accounting periods for which an election has effect. Regulation 10 also specifies certain information to be submitted with elections, and requires the company to notify the inspector when the conditions for an election to be effective cease to be met.

The Statement of Standard Accounting Practice mentioned in regulation 5(4) (SSAP 20; ISBN No 0852915047) may be obtained from A. S. B. Publications, PO Box 939, Central Milton Keynes, MK9 2HT.