
STATUTORY INSTRUMENTS

1994 No. 3232

INCOME TAX

The Exchange Gains and Losses (Debts of Varying Amounts) 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 136(14) and 167(1), (4) and (5) of the Finance Act 1993⁽¹⁾, hereby make the following Regulations:

Citation and commencement

- 1.—(1) These Regulations may be cited as the Exchange Gains and Losses (Debts of Varying Amounts) Regulations 1994.
- (2) These Regulations shall come into force on 23rd March 1995.

Debts of varying amounts

2. The following section shall be inserted in the Finance Act 1993 after section 136—

“Arm’s length test: debts of varying amounts.

136A.—(1) The provisions of this section shall have effect in relation to any exchange loss mentioned in section 136(1) above which represents the whole or part of an initial exchange loss accruing under section 127 above.

(2) Subsection (3) below applies where the circumstances are such that, had the parties to the transaction referred to in section 136(1)(b) above been dealing at arm’s length, the terms of the transaction would have been the same except that the amount of the debt at any time during the accrual period referred to in section 136(1)(c) would have been an amount (in subsection (3) below referred to as “the adjusted amount”) less than its actual amount at that time.

- (3) Where this subsection applies in relation to a debt—
 - (a) section 136(2) above shall not apply, and

(1) 1993 c. 34.

- (b) the exchange loss accruing to the company for the accrual period shall be treated as reduced to the amount it would have been if the amount of the debt had, at any time in the accrual period when the actual amount of the debt exceeded the adjusted amount, been equal to the adjusted amount;

but paragraph (b) above shall only apply if the Board so direct.

(4) Where subsection (3)(b) above applies and the accrual period is not the last to occur as regards the asset or liability while it is held or owed by the company—

- (a) an amount equal to the amount by which the loss is treated as reduced shall be set off against appropriate exchange gains accruing to the company as regards the asset or liability for subsequent accrual periods, and
- (b) any such gain shall then be treated as reduced by that amount or by so much of it as cannot be set off under this subsection against any such gain accruing for an earlier accrual period;

and an appropriate exchange gain is an exchange gain of the trade concerned (if the exchange loss is an exchange loss of a trade) or an exchange gain of the part of the trade concerned (if the exchange loss is an exchange loss of part of a trade) or a non-trading exchange gain (if the exchange loss is a non-trading exchange loss).

(5) Section 136(2) above shall not apply in a case where—

- (a) the right constituting the asset mentioned in section 136(1)(a) above arises under a loan made by the company,
- (b) the circumstances are such that, had the parties to the transaction been dealing at arm's length, its terms would have been the same except that interest would have been charged on the loan or, as the case may be, charged at a higher rate, and
- (c) in computing for tax purposes the profits or losses of the company for the accounting period which constitutes the accrual period or in which the accrual period falls the whole of the loan has been treated under section 770 of the Taxes Act 1988 (transactions at an undervalue or overvalue) as if interest had been charged on it or, as the case may be, charged at a higher rate.

(6) Subsection (7) below applies where—

- (a) paragraphs (a) and (b) of subsection (5) above apply, and
- (b) in computing for tax purposes the profits or losses of the company for the accounting period which constitutes the accrual period or in which the accrual period falls, part of the loan has at any time in that accrual period been treated under section 770 of the Taxes Act 1988 as if interest had been charged on it or, as the case may be, charged at a higher rate;

and in subsection (7) any reference to the adjusted amount is to an amount equal to the part of the loan that has been so treated.

(7) In any case where subsection (6) applies—

- (a) section 136(2) above shall not apply, and
- (b) the exchange loss accruing to the company for the accrual period shall be treated as reduced to the amount it would have been if the amount of the debt had, at any time in the accrual period when the actual amount of the debt exceeded the adjusted amount at that time, been equal to that adjusted amount (and if there is no adjusted amount at any time, the actual amount of the debt at that time shall be taken to be zero);

but paragraph (b) above shall only apply if the Board so direct.

(8) Where subsection (7)(b) above applies and the accrual period is not the last to occur as regards the asset while it is held by the company—

- (a) an amount equal to the amount by which the loss is treated as reduced shall be set off against appropriate exchange gains accruing to the company as regards the asset for subsequent accrual periods, and
- (b) any such gain shall then be treated as reduced by that amount or by so much of it as cannot be set off under this subsection against any such gain accruing for an earlier accrual period;

and an appropriate exchange gain is an exchange gain of the trade concerned (if the exchange loss is an exchange loss of a trade) or an exchange gain of the part of the trade concerned (if the exchange loss is an exchange loss of part of a trade) or a non-trading exchange gain (if the exchange loss is a non-trading exchange loss).

(9) Section 136(2) and subsections (2) to (8) above shall not apply where—

- (a) the transaction is entered into by the company mentioned in section 136(1) above (company A) and another company (company B),
- (b) the companies are members of the same group when the transaction is entered into and throughout the accounting period which constitutes the accrual period mentioned in section 136(1) above or in which the accrual period falls,
- (c) as a result of the transaction, not only does company A become entitled or subject to the asset or liability falling within section 153(1)(a) or (2)(a) below but company B also becomes subject or entitled to the corresponding liability or asset (as the case may be) falling within section 153(2)(a) or (1)(a) below,
- (d) as regards that liability or asset an appropriate exchange gain accrues to company B for an accrual period coterminous with that mentioned in section 136(1) above,
- (e) throughout the accrual period concerned company A holds or owes the asset or liability either for the purposes of one trade or for non-trading purposes,
- (f) throughout the accrual period concerned company B owes or holds the liability or asset either for the purposes of one trade or for non-trading purposes, and
- (g) amount X is the same as amount Y.

(10) For the purposes of subsection (9) above—

- (a) an appropriate exchange gain is an exchange gain of a trade or a non-trading exchange gain found (in either case) in the currency in which the exchange loss mentioned in section 136(1) above is found;
- (b) amount X is the amount of the exchange loss mentioned in section 136(1) above;
- (c) amount Y is the amount of the exchange gain mentioned in subsection (9)(d) above, found without regard to section 139 below; and
- (d) companies are members of the same group if by virtue of section 170 of the Taxation of Chargeable Gains Act 1992(2) they are members of the same group for the purposes of sections 171 to 181 of that Act.

(11) In applying subsections (2) and (5)(b) above all factors shall be taken into account including any interest or other sums that would have been payable, any currency that would have been involved, and the amount that any loan would have been.”.

(2) 1992 c. 12. Section 170 was amended by paragraph 5 of Schedule 6 to the Finance (No. 2) Act 1992 (c. 48).

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

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 Order)

These Regulations, which come into force on 23rd March 1995, insert a new section 136A into the Finance Act 1993. The new section supplements section 136 of the Finance Act 1993, which provides for the “ring-fencing” of exchange losses (by preventing relief otherwise than by set-off against future exchange gains on the same loan) where a loan is entered into on non-arm’s length terms.

The provisions in the new section apply where an exchange loss arises under section 127 of the Finance Act 1993 on a debt which varies in amount. The provisions are based on those in section 136(4) to (12) and (15) (which apply to debts which do not vary in amount), with modifications to take account of the need to compare the actual and adjusted amounts of a loan at any time in an accrual period when these amounts are different. They provide exclusions from the ring-fencing rule in section 136(2) where:~

- the terms of the loan would have been the same if the parties had been dealing at arm’s length, except for the amount of the loan (subsections (2) to (4));
- or ~a loan is regarded as not having been made on arm’s length terms solely because interest has not been charged, or has been charged at lower than a commercial rate, and interest, or additional interest, is treated as having been charged under section 770 of the Income and Corporation Taxes Act 1988 (subsections (5) to (8)); or~
- the parties to the loan transaction are both members of the same United Kingdom group of companies and a taxable exchange gain accrues as respects the loan transaction to one of the parties (subsections (9) to (11)).