



# Finance Act 1993

## 1993 CHAPTER 34

### PART II

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

### CHAPTER I

#### GENERAL

##### *Income tax: charge, rates and allowances*

#### **51 Charge and rates of income tax for 1993-94.**

- (1) Income tax shall be charged for the year 1993-94, and for that year—
  - (a) the lower rate shall be 20 per cent.,
  - (b) the basic rate shall be 25 per cent., and
  - (c) the higher rate shall be 40 per cent.
- (2) For the year 1993-94 section 1(2) of the Taxes Act 1988 shall apply as if—
  - (a) the amount specified in paragraph (aa) were £2,500 (the lower rate limit), and
  - (b) the amount specified in paragraph (b) were £23,700 (the basic rate limit);and accordingly section 1(4) of that Act (indexation) shall not apply for the year 1993-94.

#### **52 Personal and married couple's allowances.**

Sections 257 and 257A of the Taxes Act 1988 (personal and married couple's allowances) shall apply for the year 1993-94 as if the amounts specified in them were the same as the amounts specified in them as they apply for the year 1992-93, and accordingly section 257C(1) of that Act (indexation) shall not apply for the year 1993-94.

*Status:* Point in time view as at 28/07/2000. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Finance Act 1993, Part II. (See end of Document for details)

*Corporation tax charge and rate*

**53 Charge and rate of corporation tax for 1993.**

Corporation tax shall be charged for the financial year 1993 at the rate of 33 per cent.

**54 Small companies.**

For the financial year 1993—

- (a) the small companies’ rate shall be 25 per cent., and
- (b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be one fiftieth.

*Interest: general*

**55 Relief for interest.**

For the year 1993-94 the qualifying maximum defined in section 367(5) of the Taxes Act 1988 (limit on relief for interest on certain loans) shall be £30,000.

<sup>F1</sup>56 .....

**Textual Amendments**

**F1** S. 56 repealed (27.7.1999 with effect in relation to any payment of interest falling within s. 38(3)(4) of the amending Act) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(7)** Note 4

**57 Temporary relief for interest payments.**

<sup>F2</sup>(1) .....

<sup>F2</sup>(2) .....

(3) In section 365 of that Act (relief on interest on loans to buy a life annuity), after subsection (1) there shall be inserted the following subsections—

“(1A) Where, in the case of any loan—

- (a) the condition specified in subsection (1)(d) above would not (apart from this subsection) be fulfilled with respect to any land by reason of its having ceased at any time to be used by a particular person as his only or main residence; and
- (b) the intention at that time of the person to whom the loan was made, or of each of the annuitants owning an estate or interest in that land, was to take steps, before the end of the period of 12 months after the day on which it ceased to be so used, with a view to the disposal of his estate or interest,

that condition shall be treated in relation to interest on that loan as continuing to be fulfilled with respect to the land from that time until the end of that period or (if sooner) the abandonment by that person or any of those annuitants of his intention to dispose of his estate or interest.

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(1B) If it appears to the Board reasonable to do so, having regard to all the circumstances of a particular case, they may direct that in relation to that case subsection (1A) above shall have effect as if for the reference to 12 months there were substituted a reference to such longer period as meets the circumstances of that case.”

F2(4) .....

(5) This section shall have effect in relation to payments of interest made on or after 16th March 1993 (whenever falling due).

F2(6) .....

F3(7) .....

#### Textual Amendments

- F2** S. 57(1)(2)(4)(6) repealed (27.7.1999 with effect in relation to any payment of interest falling within s. 38(3)(4) of the amending Act) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(7)** Note 4
- F3** S. 57(7) repealed (3.5.1994 with effect in accordance with s. 81(6) of the amending Act) by 1994 c. 9, ss. 81, 258, **Sch. 9 para. 12, Sch. 26 Pt. V(2)** Note

### 58 Overclaims in respect of deductions of mortgage interest.

(1) After subsection (6) of section 369 of the Taxes Act 1988 (recovery of amount treated as paid by recipient of interest paid subject to a deduction under that section) there shall be inserted the following subsection—

“(7) The following provisions of the Management Act, namely—

- (a) section 29(3)(c) (excessive relief),
- (b) section 30 (tax repaid in error etc.),
- (c) section 88 (interest), and
- (d) section 95 (incorrect return or accounts),

shall apply in relation to an amount which is paid to any person by the Board as an amount recoverable in accordance with regulations made by virtue of subsection (6) above but to which that person is not entitled as if it were income tax which ought not to have been repaid and, where that amount was claimed by that person, as if it had been repaid as a relief which was not due.”

(2) This section shall not apply in relation to any payment if the payment, or the claim on which it is made, was made before the day on which this Act is passed.

### 59 Interest payments to persons not ordinarily resident in UK.

In section 349 of the Taxes Act 1988 (annual interest etc.) in subsection (3) (exceptions from requirement to deduct tax from interest payments) at the end of paragraph (g) there shall be inserted “ or ” and after that paragraph there shall be inserted the following paragraph—

“(h) to any payment in respect of which a liability to deduct income tax would, but for section 481(5)(k), be imposed by section 480A(1).”

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**60 Certain interest not allowed as a deduction.**

- (1) This section applies where—
  - (a) a qualifying company becomes subject to a qualifying debt, and
  - (b) the interest payable exceeds a commercial return on the capital repayable, expressing that capital in the settlement currency of the debt.
- (2) In computing the corporation tax chargeable for an accounting period of the company, so much of the excess interest as is paid in the accounting period shall not be allowed as a deduction against the total profits for the period (if it would be allowed apart from this section).
- (3) In this section—
  - “qualifying company” has the meaning given by section 152 below;
  - “qualifying debt” has the meaning given by section 153(10) below;
  - “settlement currency”, in relation to a debt, shall be construed in accordance with section 161 below.
- (4) This section applies where the company becomes subject to the debt (whether as the original debtor or otherwise) on or after the day which is its commencement day for the purposes of section 165 below.

*Interest etc. on debts between associated companies*

<sup>F4</sup>**61** .....

**Textual Amendments**

**F4** S. 61 repealed (29.4.1996 with effect in accordance with the provisions of Chapter II of Pt. IV of the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(3)** Note

<sup>F5</sup>**62** .....

**Textual Amendments**

**F5** S. 62 repealed (29.4.1996 with effect in accordance with the provisions of Chapter II of Pt. IV of the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(3)** Note

<sup>F6</sup>**62A** .....

**Textual Amendments**

**F6** S. 62A repealed (29.4.1996 with effect in accordance with the provisions of Chapter II of Pt. IV of the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(3)** Note

<sup>F7</sup>**63** .....

**Status:** Point in time view as at 28/07/2000. This version of this part contains provisions that are not valid for this point in time.  
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**Textual Amendments**

- F7** S. 63 repealed (29.4.1996 with effect in accordance with the provisions of Chapter II of Pt. IV of the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(3)** Note

**F8** **64** .....

**Textual Amendments**

- F8** S. 64 repealed (29.4.1996 with effect in accordance with the provisions of Chapter II of Pt. IV of the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(3)** Note (with Sch. 15 para. 19(3))

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

- C1** S. 64 amended (27.7.1999 with application as mentioned in s. 67(8) of the amending Act) by 1999 c. 16, s. 67(4)(8)

**F9** **65** .....

**Textual Amendments**

- F9** S. 65 repealed (29.4.1996 with effect in accordance with the provisions of Chapter II of Pt. IV of the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(3)** Note (with Sch. 15 para. 20(2))

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

- C2** S. 65 amended (27.7.1999 with application as mentioned in s. 67(8) of the amending Act) by 1999 c. 16, s. 67(4)(8)

**F10** **66** .....

**Textual Amendments**

- F10** S. 66 repealed (29.4.1996 with effect in accordance with the provisions of Chapter II of Pt. IV of the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(3)** Note

*Charitable donations*

**67 Donations from companies and individuals.**

- (1) In section 339 of the Taxes Act 1988 (charges on income: donations to charity) in subsection (3A) (payment by close company not a qualifying donation if less than £400 after deducting income tax) for “£400” there shall be substituted “ £250 ”.
- (2) In section 25 of the <sup>M1</sup>Finance Act 1990 (donations to charity by individuals) in subsection (2)(g) (gift must be not less than £400 to be a qualifying donation) for “£400” there shall be substituted “ £250 ”.

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(3) Subsection (1) above shall apply in relation to payments made on or after 16th March 1993.

(4) Subsection (2) above shall apply in relation to gifts made on or after 16th March 1993.

**Marginal Citations**

**M1** 1990 c. 29.

**68 Payroll deduction schemes.**

(1) In section 202(7) of the Taxes Act 1988 (which limits to £600 the deductions attracting relief) for “£600” there shall be substituted “ £900 ”.

(2) This section shall have effect for the year 1993-94 and subsequent years of assessment.

**69 Contributions to agent’s expenses.**

The following section shall be inserted after section 86 of the Taxes Act 1988—

**“86A Charitable donations: contributions to agent’s expenses.**

(1) This section applies where—

- (a) a person (the employer) is liable to make to any individual payments from which income tax falls to be deducted by virtue of section 203 and regulations under that section, and
- (b) the employer withholds sums from those payments in accordance with a scheme falling within subsection (3) of section 202 and pays the sums to an agent (within the meaning of subsection (4)(a) of that section).

(2) Any relevant expenditure incurred by the employer on or after 16th March 1993—

- (a) shall be deducted in computing for the purposes of Schedule D the profits or gains of a trade, profession or vocation carried on by the employer, or
- (b) if the employer is an investment company or a company in the case of which section 75 applies by virtue of section 76, shall be treated as expenses of management.

(3) Relevant expenditure is expenditure incurred in making to the agent any payment in respect of expenses which have been or are to be incurred by the agent in connection with his functions under the scheme.”

*Benefits in kind*

**70 Car benefits: 1993-94.**

(1) In Schedule 6 to the Taxes Act 1988 (taxation of directors and others in respect of cars) for Part I (tables of flat rate cash equivalents) there shall be substituted—

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## “PART I

### TABLES OF FLAT RATE CASH EQUIVALENTS

Table A

#### *CARS WITH AN ORIGINAL MARKET VALUE UP TO £19,250 AND HAVING A CYLINDER CAPACITY*

<i>Cylinder capacity of car in cubic centimetres</i>	<i>Age of car at end of relevant year of assessment</i>	
	Under 4 years	4 years or more
1,400 or less	£2,310	£1,580
More than 1,400 but not more than 2,000	£2,990	£2,030
More than 2,000	£4,800	£3,220

Table B

#### *CARS WITH AN ORIGINAL MARKET VALUE UP TO £19,250 AND NOT HAVING A CYLINDER CAPACITY*

<i>Original market value of car</i>	<i>Age of car at end of relevant year of assessment</i>	
	Under 4 years	4 years or more
Less than £6,000	£2,310	£1,580
£6,000 or more but less than £8,500	£2,990	£2,030
£8,500 or more but not more than £19,250	£4,800	£3,220

Table C

#### *CARS WITH AN ORIGINAL MARKET VALUE OF MORE THAN £19,250*

<i>Original market value of car</i>	<i>Age of car at end of relevant year of assessment</i>	
	Under 4 years	4 years or more
More than £19,250 but not more than £29,000	£6,210	£4,180
More than £29,000	£10,040	£6,660”

(2) This section shall have effect for the year 1993-94.

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**71 Car fuel: 1993-94.**

(1) In section 158 of the Taxes Act 1988 (car fuel) for the Tables in subsection (2) (tables of cash equivalents) there shall be substituted—

“TABLE A

<i>Cylinder capacity of car in cubic centimetres</i>	<i>Cash equivalent</i>
1,400 or less	£600
More than 1,400 but not more than 2,000	£760
More than 2,000	£1,130

TABLE AB

<i>Cylinder capacity of car in cubic centimetres</i>	<i>Cash equivalent</i>
2,000 or less	£550
More than 2,000	£710

TABLE B

<i>Original market value of car</i>	<i>Cash equivalent</i>
Less than £6,000	£600
£6,000 or more but less than £8,500	£760
£8,500 or more	£1,130”

(2) In subsection (5) of that section (reductions in cash equivalents) the words “or 3” shall be omitted.

(3) This section shall have effect for the year 1993-94.

**72 Car and car fuel benefits: 1994-95 onwards.**

Schedule 3 to this Act (which contains provisions, having effect for the year 1994-95 and subsequent years of assessment, about cars available for private use and car fuel) shall have effect.

**73 Vans.**

Schedule 4 to this Act (which contains provisions about vans available for private use) shall have effect.

**74 Heavier commercial vehicles.**

(1) In the Taxes Act 1988, after section 159AB (inserted by Schedule 4 to this Act) there shall be inserted the following section—



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**“159AC Heavier commercial vehicles available for private use.**

- (1) This section applies where in any year—
  - (a) a heavier commercial vehicle is made available to an employee in circumstances such that, had that vehicle been a van, the benefit so provided would have been chargeable to tax under section 159AA, and
  - (b) the employee’s use of the vehicle is not wholly or mainly private use.
- (2) Section 154 shall not apply to—
  - (a) the benefit so provided, or
  - (b) any benefit in connection with the vehicle other than a benefit in connection with the provision of a driver for the vehicle.
- (3) The employee shall not be taxable—
  - (a) under Schedule E in respect of the discharge of any liability of his in connection with the vehicle;
  - (b) under section 141 or 142 in respect of any non-cash voucher or credit-token to the extent that it is used by him—
    - (i) for obtaining money which is spent on goods or services in connection with the vehicle, or
    - (ii) for obtaining such goods or services;
  - (c) under section 153 in respect of any payment made to him in respect of expenses incurred by him in connection with the vehicle.
- (4) In this section “heavier commercial vehicle” means a mechanically propelled road vehicle which is—
  - (a) of a construction primarily suited for the conveyance of goods or burden of any description, and
  - (b) of a design weight exceeding 3,500 kilograms;and “design weight” here means the weight which the vehicle is designed or adapted not to exceed when in normal use and travelling on a road laden.
- (5) In this section—
  - (a) “private use”, in relation to a vehicle made available to an employee, means any use other than for his business travel, and
  - (b) “business travel” means travelling which the employee is necessarily obliged to do in the performance of the duties of his employment.”

<sup>F11</sup>(2) .....

(3) This section shall have effect for the year 1993-94 and subsequent years of assessment.

**Textual Amendments**

**F11** S. 74(2) repealed (27.7.1999 with effect for the year 1999-00 and subsequent years of assessment) by 1999 c. 16, s. 139, **Sch. 20 Pt. III(9)** Note

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## 75 **Sporting and recreational facilities.**

- (1) After section 197F of the Taxes Act 1988 there shall be inserted the following section—

*“ Sporting and recreational facilities*

### **197G Sporting and recreational facilities.**

- (1) No charge to tax under Schedule E shall arise in respect of the provision to any person in employment with any employer, or to any member of the family or household of such a person, of—
- (a) any benefit to which this section applies; or
  - (b) any non-cash voucher which is capable of being exchanged only for a benefit to which this section applies.
- (2) This section applies, subject to subsections (3) to (5) below, to any benefit consisting in, or in a right or opportunity to make use of, any sporting or other recreational facilities provided so as to be available generally to, or for use by, the employees of the employer in question.
- (3) Except in such cases as may be prescribed, this section does not apply to any benefit consisting in—
- (a) an interest in, or the use of, any mechanically propelled vehicle;
  - (b) an interest in, or the use of, any holiday or other overnight accommodation or any facilities which include, or are provided in association with, a right or opportunity to make use of any such accommodation;
  - (c) a facility provided on domestic premises;
  - (d) a facility provided so as to be available to, or for use by, members of the public generally;
  - (e) a facility which is used neither wholly nor mainly by persons whose right or opportunity to use it derives from employment (whether with the same employer or with different employers); or
  - (f) a right or opportunity to make use of any facility falling within any of the preceding paragraphs.
- (4) For the purposes of subsection (3)(e) above a person’s right or opportunity to use any facility shall be taken to derive from employment if, and only if—
- (a) it derives from his being or having been an employee of a particular employer or a member of the family or household of a person who is or has been such an employee; and
  - (b) the facility is one which is provided so as to be available generally to the employees of that employer.
- (5) The Treasury may by regulations provide—
- (a) that such benefits as may be prescribed shall not be benefits to which this section applies; and
  - (b) that such other benefits as may be prescribed shall be benefits to which this section applies only where such conditions as may be prescribed are satisfied in relation to the terms on which, and the persons to whom, they are provided.

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(6) In this section—

“domestic premises” means any premises used wholly or mainly as a private dwelling or any land or other premises belonging to, or enjoyed with, any premises so used;

“non-cash voucher” has the same meaning as in section 141;

“prescribed” means prescribed by regulations made by the Treasury;

“vehicle” includes any ship, boat or other vessel, any aircraft and any hovercraft;

and section 168(2) and (4) shall apply for the purposes of this section as it applies for the purposes of Chapter II of this Part.”

(2) This section shall apply for the year 1993-94 and subsequent years of assessment.

## 76 Removal expenses and benefits.

Schedule 5 to this Act (which relates to the payment of expenses, and the provision of benefits, in respect of removals) shall have effect.

### *Taxation of distributions etc.*

## 77 Application of lower rate.

<sup>F12</sup>(1) .....

<sup>F12</sup>(2) .....

(3) In section 249 of that Act (issues of share capital treated as income)—

(a) in subsection (4)—

(i) for the words “basic rate”, in each place where they occur, there shall be substituted “ lower rate ”; and

(ii) in paragraph (c), for “which is not chargeable at the lower rate and” there shall be substituted “ to which (without prejudice to paragraph (a) above) section 207A shall be taken to apply as it applies to income chargeable under Schedule F, but shall be treated ”;

and

(b) in subsection (6)(b), for “basic rate” there shall be substituted “ lower rate ”.

(4) In section 421(1) of that Act (taxation of borrower where loan under section 419 released)—

(a) in paragraph (a), after “tax” there shall be inserted “ at the lower rate ”;

(b) in paragraph (b), for “basic rate” there shall be substituted “ lower rate ”; and

(c) in paragraph (c), for the words from “which is not” to “that paragraph” there shall be substituted “ to which (without prejudice to paragraph (b) above) section 207A shall be taken to apply as it applies to income chargeable under Schedule F, but, notwithstanding the preceding provisions of this subsection ”.

(5) This section shall apply in relation to the year 1993-94 and subsequent years of assessment.

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**Textual Amendments**

**F12** S. 77(1)(2) repealed (29.4.1996 with effect in accordance with s. 73 and [Sch. 6](#) of the amending Act) by 1996 c. 8, s. 205, [Sch. 41 Pt. V\(1\)](#) Note 1

<sup>F13</sup>**78** .....

**Textual Amendments**

**F13** S. 78 repealed (31.7.1998 with effect in accordance with Sch. 3 of the repealing Act) by 1998 c. 36, s. 165, [Sch. 27 Pt. III\(2\)](#), Note

**79 Provisions supplemental to sections 77 and 78.**

- (1) Schedule 6 to this Act (which makes further provision for the purposes of and in connection with the provisions of sections 77 and 78 above) shall have effect.
- (2) Subject to that Schedule, subsection (3) of section 687 of the Taxes Act 1988 (definition of pool for the purposes of payments under discretionary trusts) shall have effect, and be deemed always to have had effect, as if—
  - (a) the repeal of paragraph (b) which was made by Part V of Schedule 17 to the <sup>M2</sup>Finance Act 1989 in relation to accounting periods beginning after 31st March 1989 had been confined to the following words in that paragraph, that is to say, “under section 462(2) as applied by section 686(4) or”; and
  - (b) that subsection included the following paragraph—
    - “(j) the amount of any tax on an amount which is treated as income of the trustees by virtue of paragraph 12 of Schedule 10 to the <sup>M3</sup>Finance Act 1990 and is charged to tax at a rate equal to the sum of the basic rate and the additional rate by virtue of paragraph 19 of that Schedule;”.

<sup>F14</sup>(3) .....

**Textual Amendments**

**F14** S. 79(3) repealed (29.4.1996 with effect in accordance with s. 73 and [Sch. 6](#) of the amending Act) by 1996 c. 8, s. 205, [Sch. 41 Pt. V\(1\)](#) Note 1

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**Marginal Citations**

**M2** 1989 c. 26.  
**M3** 1990 c. 29.

**80 Transitional relief for charities etc.**

- (1) In any case where—
  - (a) a qualifying distribution is made on or after 6th April 1993 and before 6th April 1997 by a company resident in the United Kingdom;
  - (b) the recipient of the distribution is a section 505 body; and

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- (c) the section 505 body is entitled to the payment of a tax credit in respect of the distribution,
- the section 505 body, on a claim made under this section to the Board, shall (in addition to its entitlement to payment of the tax credit) be entitled to be paid by the Board out of money provided by Parliament an amount determined in accordance with subsection (2) below.
- (2) The amount referred to in subsection (1) above is an amount equal to—
- (a) one-fifteenth of the amount or value of the distribution if the distribution is made on or after 6th April 1993 and before 6th April 1994;
  - (b) one-twentieth of that amount or value if the distribution is made on or after 6th April 1994 and before 6th April 1995;
  - (c) one-thirtieth of that amount or value if the distribution is made on or after 6th April 1995 and before 6th April 1996;
  - (d) one-sixtieth of that amount or value if the distribution is made on or after 6th April 1996 and before 6th April 1997.
- (3) For the purposes of this section each of the following is a section 505 body—
- (a) any charity (as defined in section 506(1) of the Taxes Act 1988);
  - (b) each of the bodies mentioned in section 507 of that Act (heritage bodies);
  - (c) any Association of a description specified in section 508 of that Act (scientific research organisations).
- (4) Any entitlement of a section 505 body to a payment under the preceding provisions of this section shall be subject to a power of the Board to determine (whether before or after any payment is made) that, having regard to the operation in relation to the qualifying distribution in question of section 235, 237 or 703 of the Taxes Act 1988 (distributions of exempt funds, bonus issues and tax avoidance provisions), that body is to be treated as if it had had no entitlement to that payment or to so much of it as they may determine.
- (5) No claim may be made under this section later than two years after the end of the chargeable period of the section 505 body in which the distribution is made.
- (6) An appeal may be brought against any decision of the Board under this section by giving written notice to the Board within thirty days of receipt of written notice of the decision.
- (7) An appeal under this section shall lie to the Special Commissioners, and the provisions of the <sup>M4</sup>Taxes Management Act 1970 relating to appeals under the Tax Acts shall apply to an appeal under this section as they apply to those appeals.
- (8) Any payment of an amount under this section shall be treated for the purposes of section 252 of the Taxes Act 1988 (rectification of excessive set-off etc. of ACT or tax credit) as a payment of tax credit.

**Marginal Citations**

M4 1970 c. 9.

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#### Textual Amendments

- F15** S. 81 repealed (31.7.1998 with effect in accordance with Sch. 3 of the repealing Act) by 1998 c. 36, s. 165, Sch. 27 Pt. III(2), Note

### *Chargeable gains*

#### **82 Annual exempt amount for 1993-94.**

For the year 1993-94 section 3 of the <sup>M5</sup>Taxation of Chargeable Gains Act 1992 (annual exempt amount) shall have effect as if the amount specified in subsection (2) were £5,800, and accordingly subsection (3) of that section (indexation) shall not apply for that year.

#### Marginal Citations

- M5** 1992 c. 12.

#### **83 Annual exempt amount: indexation for 1994-95 onwards.**

- (1) In section 3(3) of the <sup>M6</sup>Taxation of Chargeable Gains Act 1992 (indexation of annual exempt amount) for “December” (in each place) there shall be substituted “September”.
- (2) This section shall have effect for the year 1994-95 and subsequent years of assessment.

#### Marginal Citations

- M6** 1992 c. 12.

#### **84 Re-organisations etc. involving debentures.**

- (1) In section 117 of the Taxation of Chargeable Gains Act 1992 (meaning of qualifying corporate bond), after subsection (6) there shall be inserted the following subsection—
- “(6A) For the purposes of this section “corporate bond” also includes, except in relation to a person who acquires it on or after a disposal in relation to which section 115 has or has had effect in accordance with section 116(10)(c), any debenture issued on or after 16th March 1993 which is not a security (as defined in section 132) but—
- (a) is issued in circumstances such that it would fall by virtue of section 251(6) to be treated for the purposes of section 251 as such a security; and
- (b) would be a corporate bond if it were a security as so defined.”
- (2) In section 251 of that Act (general provisions in relation to debts), after subsection (5) there shall be inserted the following subsection—

*Status: Point in time view as at 28/07/2000. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1993, Part II. (See end of Document for details)*

“(6) For the purposes of this section a debenture issued by any company on or after 16th March 1993 shall be deemed to be a security (as defined in section 132) if—

- (a) it is issued on a reorganisation (as defined in section 126(1)) or in pursuance of its allotment on any such reorganisation;
- (b) it is issued in exchange for shares in or debentures of another company and in a case unaffected by section 137 where one or more of the conditions mentioned in paragraphs (a) to (c) of section 135(1) is satisfied in relation to the exchange;
- (c) it is issued under any such arrangements as are mentioned in subsection (1)(a) of section 136 and in a case unaffected by section 137 where section 136 requires shares or debentures in another company to be treated as exchanged for, or for anything that includes, that debenture; or
- (d) it is issued in pursuance of rights attached to any debenture issued on or after 16th March 1993 and falling within paragraph (a), (b) or (c) above.”

(3) This section shall have effect in relation to any chargeable period ending on or after 16th March 1993 but, in relation to any accounting period of a company which began before 6th April 1992, this section shall have effect as if the references in this section, and in the amendments made by this section, to provisions of the Taxation of Chargeable Gains Act 1992 were references to such of the provisions of the <sup>M7</sup>Capital Gains Tax Act 1979 and the <sup>M8</sup>Finance Act 1984 as correspond to those provisions and have effect in relation to that accounting period.

#### Marginal Citations

- M7 1979 c. 14.
- M8 1984 c. 43.

## 85 Personal equity plans.

After subsection (3) of section 151 of the Taxation of Chargeable Gains Act 1992 (personal equity plans) there shall be inserted the following subsection—

“(4) Regulations under this section may include provision which, for cases where a person subscribes to a plan by transferring or renouncing shares or rights to shares—

- (a) modifies the effect of this Act in relation to their acquisition and their transfer or renunciation; and
- (b) makes consequential modifications of the effect of this Act in relation to anything which (apart from the regulations) would have been regarded on or after their acquisition as an indistinguishable part of the same asset.”

## 86 Roll-over relief.

(1) In section 155 of the <sup>M9</sup>Taxation of Chargeable Gains Act 1992 (classes of assets for the purposes of roll-over relief), after Class 5 there shall be inserted—

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## “CLASS 6

Ewe and suckler cow premium quotas (that is, rights in respect of any ewes or suckler cows to receive payments by way of any subsidy entitlement to which is determined by reference to limits contained in a Community instrument).”

- (2) The Treasury may by order made by statutory instrument amend that section so as to add one or more further classes of assets to the classes specified in that section.
- (3) A statutory instrument containing an order under subsection (2) above shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (4) Subsection (1) above shall apply where the disposal of the old assets (or an interest in them) or the acquisition of the new assets (or an interest in them) is on or after 1st January 1993; but, in relation to any accounting period of a company which began before 6th April 1992, subsection (1) above shall have effect as if the inserted class were numbered 5 and were inserted after Class 4 in section 118 of the<sup>M10</sup> Capital Gains Tax Act 1979.

### Marginal Citations

- M9** 1992 c. 12.  
**M10** 1979 c. 14.

## 87 Relief on retirement or re-investment.

- (1) Schedule 7 to this Act (which amends the provisions of the Taxation of Chargeable Gains Act 1992 with respect to retirement relief and makes new provision in relation to relief on the re-investment of certain gains) shall have effect.
- (2) This section and that Schedule shall have effect in relation to any disposal made on or after 16th March 1993.

## 88 Restriction on set-off of pre-entry losses.

- (1) After section 177 of the Taxation of Chargeable Gains Act 1992 there shall be inserted the following section—

### “177A Restriction on set-off of pre-entry losses.

Schedule 7A to this Act (which makes provision in relation to losses accruing to a company before the time when it becomes a member of a group of companies and losses accruing on assets held by any company at such a time) shall have effect.”

- (2) The Schedule set out in Schedule 8 to this Act shall be inserted after Schedule 7 to that Act.
- (3) This section and that Schedule—
  - (a) shall apply for the calculation of the amount to be included in respect of chargeable gains in a company’s total profits for any accounting period ending on or after 16th March 1993; but



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- (b) shall so apply only in relation to the deduction from chargeable gains accruing on or after 16th March 1993 of amounts in respect of, or of amounts carried forward in respect of—
  - (i) pre-entry losses accruing before it became a member of the relevant group to a company whose membership of that group began or begins at a time on or after 1st April 1987; and
  - (ii) losses accruing on the disposal of any assets so far as it is by reference to such a company that the assets fall to be treated as being or having been pre-entry assets or assets incorporating a part referable to pre-entry assets.
- (4) In relation to accounting periods beginning before 6th April 1992 this section and that Schedule shall have effect as if—
  - (a) the section and Schedule inserted by subsections (1) and (2) above were inserted in the <sup>M11</sup>Capital Gains Tax Act 1979; and
  - (b) references in the Schedule so inserted to provisions of the <sup>M12</sup>Taxation of Chargeable Gains Act 1992 were references to such of the provisions of that Act of 1979 or of any other enactment as correspond to the provisions referred to and have effect in relation to that accounting period.

**Marginal Citations**

**M11** 1979 c. 14.

**M12** 1992 c. 12.

**89 De-grouping charges.**

- (1) In section 179(4) of the Taxation of Chargeable Gains Act 1992 (time at which de-grouping charges accrue), for the words from “as follows” onwards there shall be substituted “at whichever is the later of the following, that is to say—
  - (a) the time immediately after the beginning of the accounting period of that company in which or, as the case may be, at the end of which the company ceases to be a member of the group; and
  - (b) the time when under subsection (3) above it is treated as having reacquired the asset;

and subsection (2) of section 409 of the Taxes Act (group relief) shall require any apportionment under that subsection to be made accordingly but shall not require any reference in this subsection to an accounting period to have effect for any of the purposes specified in subsection (3) of that section as a reference to any accounting period other than a true accounting period. ”

- (2) This section shall have effect in relation to accounting periods ending after the day appointed for the purposes of section 180(1)(b) of that Act.

<sup>F16</sup>90 .....

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*Changes to legislation: There are currently no known outstanding effects  
 for the Finance Act 1993, Part II. (See end of Document for details)*

### Textual Amendments

**F16** S. 90 repealed (28.7.2000 with effect as mentioned in Sch. 40 Pt. II(12), note 10 of the amending Act) by 2000 c. 17, s. 156, **Sch. 40 Pt. II(12)**

## 91 Deemed disposals of unit trusts by insurance companies.

- (1) Section 212 of the Taxation of Chargeable Gains Act 1992 (annual deemed disposal by insurance companies of unit trusts) shall have effect in relation to accounting periods beginning on or after 1st January 1993; and neither that section nor section 46 of the <sup>M13</sup>Finance Act 1990 (which is consolidated in that section) shall have effect in relation to any earlier accounting period in relation to which either of them would have applied apart from this subsection.
- (2) In relation to any accounting period beginning on or after 1st January 1993—
  - (a) section 432A of the Taxes Act 1988 shall have effect with the omission of subsection (10) (which disappplies the apportionment rules in that section in the case of a deemed disposal under section 212 of that Act of 1992); and
  - (b) that section 212 shall have effect with the omission, in subsection (2), of the words from “and in relation to” onwards and of subsections (3), (4) and (6) (which provide for a different apportionment rule in the case of the deemed disposal).
- (3) In subsection (7) of that section 212, in the words after paragraph (b) (application of definitions in the Taxes Act 1988), for “and 214” there shall be substituted “to 214A”.
- (4) After section 213(1) of that Act of 1992 (spreading of gains and losses), there shall be inserted the following subsection—
 

“(1A) Subsection (1) above shall not apply to chargeable gains or allowable losses except so far as they are gains or losses which—

  - (a) are referable to basic life assurance and general annuity business; or
  - (b) would (apart from that subsection) be taken into account in computing the profits of any business treated as a separate business under section 458 of the Taxes Act;

and that subsection shall apply separately in relation to the gains and losses falling within paragraph (a) above and those falling within paragraph (b) above for the purpose of determining what chargeable gains or allowable losses so referable are to be treated as accruing under that subsection and what chargeable gains or allowable losses to be so taken into account are to be treated as so accruing.”
- (5) Section 214 of that Act of 1992 shall have effect with the omission of subsections (3) to (5) (run-off relief), and after that section there shall be inserted the following section—

### “214A Further transitional provisions.

- (1) This section applies where within two years after the end of an accounting period beginning on or after 1st January 1993 (“the relevant period”)—
  - (a) an insurance company makes a claim for the purposes of this section in relation to that period; and

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*Changes to legislation:* There are currently no known outstanding effects for the Finance Act 1993, Part II. (See end of Document for details)

- (b) that period is one of the company's first eight accounting periods after the end of 1992.
- (2) Where this section applies, section 213 shall have effect as if—
- (a) the amount of the chargeable gains which—
- (i) apart from that section and this section, would be treated as accruing on disposals deemed by virtue of section 212 to have been made at the end of the relevant period, and
- (ii) satisfy the condition specified in paragraph (a) of section 213(1A),
- were reduced by the protected proportion of that amount; and
- (b) an amount equal to the appropriate part of that reduction were (subject to section 213) a chargeable gain satisfying that condition and accruing at the end of each of the accounting periods in which the reduction is to be taken into account.
- (3) For the purposes of subsection (2) above the protected proportion, in relation to the relevant period, of the amount mentioned in paragraph (a) of that subsection shall be an amount equal to the amount calculated in accordance with the following formula—

$$\left( A + \frac{B \times C}{D} \right) \times \frac{E}{F} \times \frac{G}{8}$$

- (4) In subsection (3) above—

A is so much of the amount mentioned in subsection (2)(a) above as represents chargeable gains on section 212 assets which at the end of the relevant period were linked solely to the basic life assurance and general annuity business of the company in question;

B is so much of the amount so mentioned as represents chargeable gains on linked section 212 assets which at the end of that period were partially linked to that business;

C is the amount of such of the closing liabilities at the end of that period of the company's basic life assurance and general annuity business as were liabilities in respect of benefits to be determined by reference to the value of linked section 212 assets which were then partially linked to that business;

D is the amount of all the closing liabilities of the company at the end of that period which were long term business liabilities in respect of benefits to be so determined;

E is the amount of such of the closing liabilities of the company on the relevant date as were relevant linked liabilities in respect of benefits determined by reference to linked section 212 assets;

F is the amount of all the closing liabilities on the relevant date of the company's basic life assurance and general annuity business which were liabilities in respect of such benefits; and

G is the number of accounting periods in the first nine accounting periods of the company after the end of 1992 which remain after the end of the relevant period or, as the case may be, which would so remain apart from any cessation of the carrying on of any business of the company;

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and for the purposes of this subsection the relevant date is, subject to subsection (7) below, the time of the first disposal which is deemed to have been made by the company in question under section 212.

- (5) For the purposes of this section and subject to subsection (6) below—
- (a) a reduction made under subsection (2) above in relation to the accounting period of any company shall be taken into account in every succeeding accounting period of that company which is included in the first nine accounting periods of that company after the end of 1992; and
  - (b) in relation to any accounting period in which a reduction is to be taken into account, the appropriate part of the reduction is—
    - (i) if that is the only accounting period in which it falls to be taken into account, the whole of the reduction; and
    - (ii) in any other case, the amount of the reduction divided by the number of the accounting periods after the period in which the reduction is made in which the reduction falls to be taken into account or, as the case may be, would so fall apart from any cessation of the carrying on of any business of the company.
- (6) Subject to subsection (7) below, where a company ceases to carry on long term business before the end of the first nine accounting periods after the end of 1992, the appropriate part of any reduction in relation to the accounting period ending with the cessation shall be such as to secure that the whole of the reduction has been taken into account under subsection (2)(b) above.
- (7) Where at any time on or after 1st January 1993 there is a transfer of the whole or part of the long term business of an insurance company (“the transferor”) to another company (“the transferee”) in accordance with a scheme sanctioned by a court under section 49 of the <sup>MI4</sup>Insurance Companies Act 1982, this section shall have effect so that—
- (a) the relevant date for the purposes of subsection (4) above shall be determined in relation to any disposal deemed to have been made after the transfer—
    - (i) by the transferee, or
    - (ii) in a case where the transfer is of part of the transferor’s long term business, by the transferee or the transferor,
 as if there had been no deemed disposals under section 212 before the transfer; and
  - (b) any reduction which (on the assumption that the transferor had continued to carry on the transferred business) would have fallen to be taken into account under subsection (2)(b) above shall be taken into account instead in relation to the transferee.
- (8) Where the transfer is of part only of the transferor’s long term business, subsection (7)(b) above shall apply only to such part of any reduction to which it would otherwise apply as is appropriate.
- (9) Any question arising as to the operation of subsection (8) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and

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transferee shall be entitled to appear and be heard or to make representations in writing.

(10) This section shall have effect in relation to any cases in which there is such a transfer as is mentioned in subsection (7) above as if the accounting periods to be taken into account in any calculation for the purposes of this section of the number of accounting periods of the transferee after the end of 1992, and the only accounting periods in relation to which any reduction is to be taken into account under paragraph (b) of that subsection, were—

- (a) the accounting periods of the transferor which began on or after 1st January 1993 and ended on or before the day of the transfer (including any which, by reference to a transfer in relation to which the transferor is a transferee, are taken into account in accordance with this subsection as accounting periods of the transferor); and
- (b) the accounting periods of the transferee ending after the day of the transfer,

and this section shall have effect in relation to such a reduction as if the first accounting period of the transferee to end after the day of the transfer began with the day after the transfer.

(11) For the purposes of this section assets shall be taken to be partially linked to a company's basic life assurance and general annuity business if they are not linked solely to that business and are neither—

- (a) linked solely to any pension business or long term business of that company other than life assurance business; nor
- (b) assets of the company's overseas life assurance fund;

and subsection (1) of section 214 shall apply for the purposes of this section as it applies for the purposes of that section.

(12) Subject to subsection (10) above, the references in this section, in relation to any company, to the first eight accounting periods of a company after the end of 1992 are references to the first accounting period of that company to begin on or after 1st January 1993 and to the succeeding seven accounting periods of that company, and references to the first nine accounting periods of a company after the end of 1992 shall be construed accordingly.”

(6) In section 214(6)(a) of that Act of 1992 (replacement relief), after “1989” there shall be inserted “ and before the time when it is first deemed under section 212 to have made a disposal of any assets ”.

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**Marginal Citations**

**M13** 1990 c. 29.

**M14** 1982 c. 50.

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### *Corporation tax: currency*

#### [<sup>F17</sup>92] **The basic rule: sterling to be used.**

- (1) Where a company carries on a business, the profits or losses of the business for an accounting period shall for the purposes of corporation tax be computed and expressed in sterling; but this is subject to section 93 below.
- (2) In this section—
  - “losses” includes management expenses and any allowances falling to be made under section 28 or 61(1) of the <sup>M15</sup>Capital Allowances Act 1990;
  - “profits” includes gains, income and any charges falling to be made under section 28 or 61(1) of that Act.]

#### **Textual Amendments**

**F17** Ss. 92-94 substituted (28.7.2000 with effect as mentioned in 105(2)-(5) of the amending Act) for ss. 92-95 by 2000 c. 17, s. 105(1)

#### **Marginal Citations**

**M15** 1990 c. 1.

#### [<sup>F18</sup>93] **Use of currency other than sterling.**

- (1) This section applies where in an accounting period a company carries on a business and either the first condition or the second condition is fulfilled.
- (2) The first condition is that—
  - (a) the accounts of the company as a whole are prepared in a currency other than sterling in accordance with normal accounting practice; and
  - (b) in the case of a company which is not resident in the United Kingdom, the company makes a return of accounts for its branch in the United Kingdom prepared in such a currency in accordance with such practice.
- (3) The second condition is that—
  - (a) the accounts of the company as a whole are prepared in sterling but, so far as relating to the business, they are prepared, using the closing rate/net investment method, from financial statements prepared in a currency other than sterling; or
  - (b) in the case of a company which is not resident in the United Kingdom, the company makes a return of accounts for its branch in the United Kingdom prepared in sterling but, so far as relating to the business, it is prepared, using that method, from financial statements prepared in such a currency.
- (4) The profits or losses of the business for an accounting period shall for the purposes of corporation tax be found by—
  - (a) taking the amount of all the profits and losses of the business for the period computed and expressed in the relevant foreign currency;
  - (b) taking account of any of the following which are so computed and expressed—

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- (i) any management expenses brought forward under section 75(3) of the Taxes Act 1988 from an earlier accounting period;
    - (ii) any losses of the business brought forward under section 392B or 393 of that Act from such a period; and
    - (iii) any non-trading deficits on loan relationships brought forward under section 83 of the <sup>M16</sup>Finance Act 1996 from the previous accounting period; and
  - (c) taking the sterling equivalent of the amount found by applying paragraphs (a) and (b) above.
- (5) In the application of section 22B, 34, 35, 38C, 38D or 79A of the <sup>M17</sup>Capital Allowances Act 1990 for the purposes of subsection (4)(a) or (b) above, it shall be assumed that any sterling amount mentioned in any of those sections is its equivalent expressed in the relevant foreign currency.
- (6) Where in an accounting period—
  - (a) a company carries on different parts of a business through different branches (whether within or outside the United Kingdom); and
  - (b) this section would apply differently in relation to different parts if they were separate businesses,those parts shall be treated for the purposes of this section as if they were separate businesses for that period.
- (7) In this section, unless the context otherwise requires—
  - “accounts”, in relation to a company, means—
    - (a) the annual accounts of the company prepared in accordance with Part VII of the <sup>M18</sup>Companies Act 1985 or Part VIII of the <sup>M19</sup>Companies (Northern Ireland) Order 1986; or
    - (b) 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
    - (c) if the company 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 it;
  - “branch” includes any collection of assets and liabilities;
  - “the closing rate/net investment method” means the method so called 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;
  - “home State”, in relation to a company, means the country or territory under whose laws the company is incorporated;
  - “losses” has the same meaning as in section 92 above except that it does not include allowable losses within the meaning of the <sup>M20</sup>Taxation of Chargeable Gains Act 1992;
  - “profits” has the same meaning as in section 92 above except that it does not include chargeable gains within the meaning of that Act;
  - “the relevant foreign currency” means the currency other than sterling or, where the first condition is fulfilled and two different such currencies are involved, the currency in which the return of accounts is prepared;
  - “return of accounts”, in relation to a branch in the United Kingdom, means a return of such accounts of the branch as may be required by the Inland

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Revenue under paragraph 3 of Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters).]

#### Textual Amendments

**F18** Ss. 92-94 substituted (28.7.2000 with effect as mentioned in 105(2)-(5) of the amending Act) for ss. 92-95 by 2000 c. 17, s. 105(1)

#### Marginal Citations

**M16** 1996 c. 8.

**M17** 1990 c. 1.

**M18** 1985 c. 6.

**M19** S.I. 1986/1032 (N.I.6).

**M20** 1992 c. 12.

VALID FROM 24/07/2002

#### [<sup>F19</sup>93A Use of other currency: accounts partly from statements in foreign currency

- (1) This section applies where in an accounting period a company carries on a business and either the first condition or the second condition is fulfilled.
- (2) The first condition is that—
  - (a) the accounts of the company as a whole are prepared in sterling but, so far as relating to part of the business, they are prepared, using the closing rate/net investment method, from financial statements and records prepared in a currency other than sterling; or
  - (b) in the case of a company which is not resident in the United Kingdom, the company makes a return of accounts for its branch in the United Kingdom prepared in sterling but, so far as relating to part of the business, it is prepared, using that method, from financial statements and records prepared in a currency other than sterling.
- (3) The second condition is that—
  - (a) the accounts of the company as a whole are prepared in a currency other than sterling (“the first currency”) in accordance with generally accepted accounting practice but, so far as relating to part of the business, they are prepared, using the closing rate/net investment method, from financial statements and records prepared in a currency (“the second currency”) which is neither sterling nor the first currency; or
  - (b) in the case of a company which is not resident in the United Kingdom, the company makes a return of accounts for its branch in the United Kingdom prepared in a currency other than sterling (“the first currency”) in accordance with generally accepted accounting practice, but, so far as relating to part of the business, it is prepared, using the closing rate/ net investment method, from financial statements and records prepared in a currency (“the second currency”) which is neither sterling nor the first currency.
- (4) The profits or losses of the part of the business for an accounting period shall for the purposes of corporation tax be found by—



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- (a) taking the amount of all the profits and losses of the part of the business for the period computed and expressed in the relevant foreign currency; and
  - (b) taking—
    - (i) in a case where the first condition is fulfilled, the sterling equivalent, or
    - (ii) in a case where the second condition is fulfilled, the equivalent in the first currency,of the amount found by applying paragraph (a) above.
- (5) In a case where the second condition is fulfilled, effect shall be given to subsection (4) above before effect is given to section 93(4) above.
- (6) In the application for the purposes of subsection (4)(a) above of—
- (a) section 578A(2) or (3) of the Taxes Act 1988, or
  - (b) section 43(3), 74(2), 75(1), 76(2), (3) or (4), 99(1), (2) or (3) or 208(1) of the Capital Allowances Act,
- it shall be assumed that any sterling amount mentioned in any of those sections is its equivalent expressed in the relevant foreign currency.
- (7) Where for any accounting period—
- (a) the accounts of the company, so far as relating to a part of its business, are prepared, using the closing rate/net investment method, from financial statements and records prepared in a currency which is not sterling and, where the second condition is fulfilled, is not the first currency, or
  - (b) in the case of a company which is not resident in the United Kingdom, its return of accounts for its branch in the United Kingdom, so far as relating to a part of the company's business, is prepared, using that method, from such financial statements and records,
- then, if different such financial statements and records are prepared in different currencies, the company shall be treated for the purposes of this section as having a separate part of a separate business for each such different currency (and this section shall accordingly apply separately in relation to each such part).
- (8) In this section, “part of a business” includes any collection of assets and liabilities.
- (9) In this section, unless the context otherwise requires—
- “accounts” has the same meaning as in section 93 above;
  - “the closing rate/net investment method” means the method so called 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;
  - “losses” has the same meaning as in section 92 above, except that it does not include allowable losses within the meaning of the Taxation of Chargeable Gains Act 1992;
  - “profits” has the same meaning as in section 92 above, except that it does not include chargeable gains within the meaning of that Act;
  - “the relevant foreign currency” means the currency in which the financial statements and records mentioned in subsection (2) or, as the case may be, (3) above are prepared;
  - “return of accounts” has the same meaning as in section 93 above.]

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*Changes to legislation: There are currently no known outstanding effects  
 for the Finance Act 1993, Part II. (See end of Document for details)*

### Textual Amendments

**F19** S. 93A inserted (24.7.2002 with effect as mentioned in s. 80(2) of the amending Act) by 2002 c. 23, s. 80, Sch. 24 para. 4 (with Sch. 23 para. 25)

### Modifications etc. (not altering text)

**C3** Ss. 92-94AB applied (24.7.2002 with effect as mentioned in s. 80(2) of the amending Act) by 2002 c. 23, s. 80, Sch. 24 para. 7(2) (with Sch. 23 para. 25)

VALID FROM 24/07/2002

## [<sup>F20</sup>94AARules for ascertaining currency equivalents: general

- (1) Where any receipt or expense, or the value of any asset, liability or derivative contract, of a company—
  - (a) is to be taken into account in making a computation under subsection (1) of section 92 above for an accounting period, and
  - (b) is denominated in a currency other than sterling,
 it shall be translated into its sterling equivalent by reference to a rate determined in accordance with subsection (4) below.
- (2) Where the amount of any receipt or expense, or the value of any asset, liability or derivative contract, of a company—
  - (a) falls to be brought into account for the purposes of the accounts mentioned in paragraph (a), or the return of accounts mentioned in paragraph (b), of subsection (2) of section 93 above,
  - (b) is denominated in a currency other than the relevant foreign currency, within the meaning of that section, and
  - (c) accordingly falls to be translated into the relevant foreign currency,
 the amount or value shall for the purposes of that section be translated from the currency mentioned in paragraph (b) above into the relevant foreign currency by reference to a rate determined in accordance with subsection (4) below.
- (3) Where, for any purpose of any provision of section 93A(4) or (6) above, any profit or loss denominated in one currency falls to be translated into its equivalent expressed in another currency, the translation shall be made by reference to a rate determined in accordance with subsection (4) below.
- (4) The rate is—
  - (a) the rate used in the preparation of the accounts of the company for the accounting period in question, if that rate is an arm's length exchange rate for the relevant day, or
  - (b) in any other case, the London closing exchange rate for the relevant day.
- (5) The reference in subsection (4)(a) above to the exchange rate used in the preparation of the accounts of the company includes a reference to any exchange rate implied by a derivative contract whose underlying subject matter is currency.
- (6) Nothing in this section affects the operation of Chapter 4 of Part 17 of the Taxes Act 1988 (controlled foreign companies).

**Status:** Point in time view as at 28/07/2000. This version of this part contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 1993, Part II. (See end of Document for details)

- (7) Nothing in paragraph 88 of Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters) shall be taken to prevent an amount being translated under this section for an accounting period by reference to an exchange rate which was not the exchange rate used to translate that amount for the purposes of the Corporation Tax Acts for another accounting period (whether of the same or a different company).
- (8) In this section—
- “accounts” has the same meaning as in section 93 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;
  - “derivative contract” shall be construed in accordance with Schedule 26 to the Finance Act 2002;
  - “the relevant day”—
    - (a) where the rate used in the preparation of the accounts is an exchange rate for a particular day, means that day; and
    - (b) where the rate used in the preparation of the accounts is an average rate for a number of days, means each of those days;
  - “underlying subject matter”, in relation to a derivative contract, shall be construed in accordance with Schedule 26 to the Finance Act 2002.]

#### Textual Amendments

**F20** S. 94AA substituted (24.7.2002 with effect as mentioned in s. 80(2) of the amending Act) for s. 94 by 2002 c. 23, s. 80, Sch. 24 para. 5 (with Sch. 23 para. 25)

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

**C4** Ss. 92-94AB applied (24.7.2002 with effect as mentioned in s. 80(2) of the amending Act) by 2002 c. 23, s. 80, Sch. 24 para. 7(2) (with Sch. 23 para. 25)

VALID FROM 24/07/2002

#### [<sup>F21</sup>94AB] Rules for ascertaining sterling equivalent for section 93(4) or (5)

- (1) Where the amount of any receipt or expense, or the value of any asset, liability or derivative contract, of a company falls to be translated into its sterling equivalent for the purposes of section 93(4) or (5) above, the translation shall be made by reference to a rate which is an arm’s length exchange rate for the appropriate day.
- (2) For the purposes of subsection (1) above, the “appropriate day” is the day the rate for which would have been used if the accounts, or return of accounts, of the company were translated into sterling in accordance with generally accepted accounting practice in relation to foreign currency translation.
- (3) Nothing in this section affects the operation of Chapter 4 of Part 17 of the Taxes Act 1988 (controlled foreign companies).
- (4) Nothing in paragraph 88 of Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters) shall be taken to prevent an amount being translated under this section for an accounting period by reference to an exchange

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rate which was not the exchange rate used to translate that amount for the purposes of the Corporation Tax Acts for another accounting period (whether of the same or a different company).

(5) In this section—

- “accounts” has the same meaning as in section 93 above;
- “arm’s length exchange rate” has the same meaning as in section 94AA;
- “derivative contract” shall be construed in accordance with Schedule 26 to the Finance Act 2002.]

#### Textual Amendments

**F21** S. 94AB inserted (24.7.2002 with effect as mentioned in s. 80(2) of the amending Act) by 2002 c. 23, s. 80, **Sch. 24 para. 6** (with **Sch. 23 para. 25**)

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

**C5** Ss. 92-94AB applied (24.7.2002 with effect as mentioned in s. 80(2) of the amending Act) by 2002 c. 23, s. 80, **Sch. 24 para. 7(2)**

### [<sup>F22</sup>94 Rules for ascertaining currency equivalents.

- (1) Any receipt or expense which is to be taken into account in making a computation under subsection (1) of section 92 above for an accounting period, and is denominated in a currency other than sterling, shall be translated into its sterling equivalent—
  - (a) if either of the conditions mentioned in subsection (2) below is fulfilled, by reference to the rate used in the preparation of the accounts of the company as a whole for that period;
  - (b) if neither of those conditions is fulfilled, by reference to the London closing exchange rate for the relevant day.
- (2) The conditions are—
  - (a) that the rate is an arm’s length exchange rate for the relevant day;
  - (b) that the rate is an average arm’s length exchange rate for a period ending with that day, or for a period not exceeding three months which includes that day, and the arm’s length exchange rate for any day in that period (except the first) is not significantly different from that for the preceding day.
- (3) Subject to subsections (5) and (7) below, any amount found by applying paragraphs (a) and (b) of subsection (4) of section 93 above shall be translated into its sterling equivalent by reference to the London closing exchange rate for the relevant day.
- (4) The following—
  - (a) any receipt or expense which is to be taken into account in making a calculation for the purposes of subsection (4)(a) or (b) of section 93 above, and is denominated in a currency other than the relevant foreign currency; and
  - (b) any such sterling amount as is referred to in subsection (5) of that section, shall be translated into its equivalent expressed in the relevant foreign currency by reference to the London closing exchange rate for the relevant day.
- (5) Where section 93 above applies by virtue of the first condition mentioned in that section, then, as regards the business or part of the business, the company—

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- (a) may elect, by a notice given to an officer of the Board, that as from the first day of the accounting period in which the notice is given, an average arm's length exchange rate shall be used for the purposes of subsection (3) above instead of the rate there mentioned; and
  - (b) may withdraw such an election, by a notice so given, as from the first day of the first accounting period beginning on or after the date of the notice.
- (6) Where an election under subsection (5) above is withdrawn, no further election may be made under that subsection so as to take effect before the third anniversary of the day on which the withdrawal takes effect.
- (7) Where—
- (a) section 93 above applies by virtue of the second condition mentioned in that section; and
  - (b) the accounts of the company, so far as relating to the business or part of the business, are prepared by reference to an average arm's length exchange rate, that exchange rate shall be used for the purposes of subsection (3) above instead of the rate there mentioned.
- (8) In this section—
- “accounts” has the same meaning as in section 93 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;
  - “average arm's length exchange rate”, in relation to a period, means the rate which represents an appropriate average of arm's length exchange rates for the period;
  - “the relevant day” means—
- (a) for the purposes of subsections (1), (2) and (4)(a) above, the day on which the company becomes entitled to the receipt or incurs (or is treated as incurring) the expense;
  - (b) for the purposes of subsection (3) above, the last day of the accounting period in question;
  - (c) for the purposes of subsection (4)(b) above, the day on which the company incurs the capital expenditure.
- (9) Nothing in this section affects the operation of Chapter IV of Part VII of the Taxes Act 1988 (controlled foreign companies) or Chapter II of this Part.
- (10) Nothing in paragraph 88 of Schedule 18 to the <sup>M21</sup>Finance Act 1998 (company tax returns, assessments and related matters) shall be taken to prevent any amount which is taken to be conclusively determined for the purposes of the Corporation Tax Acts from being translated under this section by reference to an exchange rate which was not used to determine the amount which can no longer be altered.]

#### Textual Amendments

**F22** Ss. 92-94 substituted (28.7.2000 with effect as mentioned in 105(2)-(5) of the amending Act) for ss. 92-95 by 2000 c. 17, s. 105(1)

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

**C6** Ss. 92-94AB applied (24.7.2002 with effect as mentioned in s.80(2) of the amending Act) by 2002 c. 23, s. 80, Sch.24, para. 7(2) (with Sch. 23, para. 25)

*Status: Point in time view as at 28/07/2000. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects  
 for the Finance Act 1993, Part II. (See end of Document for details)*

### Marginal Citations

**M21** 1998 c. 36.

## [<sup>F28</sup>96 Foreign companies: trading currency.

- (1) In Schedule 24 to the Taxes Act 1988 (assumptions for calculating chargeable profits, creditable tax and corresponding United Kingdom tax of foreign companies) the following paragraph shall be inserted after paragraph 4—

- “4A (1) Sub-paragraph (2) below applies where—
- (a) the company carries on a trade, and
  - (b) the currency used in the accounts of the company for an accounting period is a currency other than sterling.
- (2) It shall be assumed that by virtue of regulations under section 93 of the Finance Act 1993 (corporation tax: currency to be used) the basic profits or losses of the trade for the accounting period are to be computed and expressed for the purposes of corporation tax in the currency used in the accounts of the company for the period.
- (3) References in this paragraph to the accounts of a company—
- (a) are to the accounts which the company is required by the law of its home State to keep, or
  - (b) if the company is not required by the law of its home State to keep accounts, are to the accounts of the company which most closely correspond to the individual accounts which companies formed and registered under the <sup>M22</sup>Companies Act 1985 are required by that Act to keep;
- and for the purposes of this paragraph the home State of a company is the country or territory under whose law the company is incorporated.
- (4) The reference in sub-paragraph (2) above to the basic profits or losses of the trade for the accounting period shall be construed in accordance with section 93 of the Finance Act 1993.”

- (2) This section applies in relation to any accounting period beginning on or after the day appointed under section 165(7)(b) below.]

### Textual Amendments

**F28** S. 96 repealed (*retrospectively*) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(18)**, Note

### Marginal Citations

**M22** 1985 c. 6.

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**Status:** Point in time view as at 28/07/2000. This version of this part contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 1993, Part II. (See end of Document for details)

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### *Overseas life insurance companies*

#### **97 Modification of Taxes Act 1988.**

(1) The following shall be inserted after section 444A of the Taxes Act 1988—

*“ Provisions applying in relation to overseas life insurance companies*

#### **444B Modification of Act in relation to overseas life insurance companies.**

Schedule 19AC (which makes modifications of this Act in relation to overseas life insurance companies) shall have effect.”

(2) Schedule 9 to this Act (which inserts Schedule 19AC into that Act and makes further provision) shall have effect.

#### **98 Modification of section 440 of Taxes Act 1988.**

(1) The following section shall be inserted after section 444B of the Taxes Act 1988—

#### **“444C Modification of section 440.**

(1) Where the company mentioned in section 440(1) is an overseas life insurance company, section 440 shall have effect with the modifications in subsections (2) and (3) below.

(2) Subsection (4) shall be treated as if—

- (a) paragraph (c) were omitted;
- (b) in paragraphs (a), (b), (d) and (e), the words “UK assets” were substituted for the word “assets”; and
- (c) at the end there were inserted the following paragraphs—
  - (f) section 11C assets;
  - (g) non-UK assets.”

(3) The following subsection shall be treated as inserted at the end of the section—

(6) For the purposes of this section—

- (a) UK assets are—
  - (i) section 11(2)(b) assets;
  - (ii) section 11(2)(c) assets; or
  - (iii) assets which by virtue of section 11B are attributed to the branch or agency in the United Kingdom through which the company carries on life assurance business;
- (b) section 11C assets are assets—
  - (i) (in a case where section 11C (other than subsection (9)) applies) of the relevant fund, other than UK assets; or
  - (ii) (in a case where that section including that subsection applies) of the relevant funds, other than UK assets;
- (c) non-UK assets are assets which are not UK assets or section 11C assets;



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and any expression used in this subsection to which a meaning is given by section 11A has that meaning.”

- (4) Where one or each of the companies mentioned in section 440(2) is an overseas life insurance company, section 440(2)(b) and (4) shall have effect as if for “categories”, in each place where the word occurs, there were substituted “paragraphs”.
- (5) Where the transferor company mentioned in section 440(2) is an overseas life insurance company, section 440 shall have effect, as regards the time immediately before the acquisition, with the modifications in subsections (2) and (3) above.
- (6) Where the acquiring company mentioned in section 440(2) is an overseas life insurance company, section 440 shall have effect, as regards the time immediately after the acquisition, with the modifications in subsections (2) and (3) above.”

- (2) This section shall apply—
  - (a) so far as section 440(1) is concerned, as regards events falling on or after the first day of the relevant accounting period of the company concerned;
  - (b) so far as section 440(2) is concerned, as regards events falling on or after the first day of the relevant accounting period of the transferor company or on or after the first day of the relevant accounting period of the acquiring company (whichever of those days falls later).
- (3) For the purposes of subsection (2) above a company’s relevant accounting period is its first accounting period to begin after 31st December 1992.

**F2999** .....

**Textual Amendments**

**F29** S. 99 repealed (1.5.1995 with effect in accordance with Sch. 8 para. 57 of the repealing Act) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(5)**, Note 2

**100 Income from investments attributable to BLAGAB, etc.**

- <sup>F30</sup>(1) .....
- (2) In section 475 of that Act (tax-free Treasury securities: exclusion of interest on borrowed money), in subsection (6)—
  - <sup>F30</sup>(a) .....
  - (b) for the words “of the life assurance fund”, in each place where they occur, there shall be substituted the words “ attributable to basic life assurance and general annuity business ”.
- (3) This section shall apply in relation to accounting periods beginning after 31st December 1992.



*Status: Point in time view as at 28/07/2000. This version of this part contains provisions that are not valid for this point in time.  
Changes to legislation: There are currently no known outstanding effects for the Finance Act 1993, Part II. (See end of Document for details)*

#### Textual Amendments

**F30** S. 100(1)(2)(a) repealed (1.5.1995 with effect in accordance with Sch. 8 para. 57 of the repealing Act) by 1995 c. 4, s. 162, Sch. 29 Pt. VIII(5), Note 2

### 101 Modification of Finance Act 1989.

(1) The following section shall be inserted after section 89 of the <sup>M23</sup>Finance Act 1989—

**“89A Modification of sections 83 and 89 in relation to overseas life insurance companies.**

Schedule 8A to this Act (which makes modifications of sections 83 and 89 in relation to overseas life insurance companies) shall have effect.”

(2) Schedule 10 to this Act (which inserts Schedule 8A into that Act) shall have effect.

#### Marginal Citations

**M23** 1989 c. 26.

### 102 Modification of Taxation of Chargeable Gains Act 1992.

(1) The following section shall be inserted after section 214A of the <sup>M24</sup>Taxation of Chargeable Gains Act 1992—

**“214B Modification of Act in relation to overseas life insurance companies.**

Schedule 7B (which makes modifications of this Act in relation to overseas life insurance companies) shall have effect.”

(2) Schedule 11 to this Act (which inserts Schedule 7B into that Act) shall have effect.

#### Marginal Citations

**M24** 1992 c. 12.

### 103 Amendment of definition and repeals.

(1) In section 431(2) of the Taxes Act 1988 (definitions), in the definition of “overseas life insurance company” for the words “having its head office outside” there shall be substituted the words “not resident in”.

(2) The following provisions of that Act shall cease to have effect—

- (a) section 445 (charge to tax on investment income of overseas life insurance company);
- (b) section 446(1) (qualifying distributions part of profits of pension business of overseas life insurance company);

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- (c) section 447(1), (2) and (4) (set-off of income tax and tax credits against corporation tax assessed under section 445);
  - (d) section 448 (qualifying distributions and tax credits);
  - (e) section 449 (double taxation agreements);
  - (f) section 724(5) to (8) (special provisions of accrued income scheme for overseas life insurance companies);
  - (g) section 811(2)(c) (provision about deduction of foreign tax not to affect overseas life insurance company charged under section 445);
  - (h) paragraph 1(9) of Schedule 19AB (payments on account of tax credits in case of pension business: special provision for overseas life insurance companies).
- (3) Subject to subsection (4) below, this section shall apply in relation to accounting periods beginning after 31st December 1992.

<sup>F31</sup>(4) .....

#### Textual Amendments

**F31** S. 103(4) repealed (29.4.1996 with effect in accordance with the provisions of Chapter II of Pt. IV of the repealing Act) by 1996 c. 8, s. 205, Sch. 41 Pt. V(3) Note

#### *Approved share option schemes*

#### **104 Calculation of consideration.**

After section 149 of the <sup>M25</sup>Taxation of Chargeable Gains Act 1992 there shall be inserted the following section—

##### **“149A Approved share option schemes.**

- (1) This section applies where—
  - (a) an option is granted on or after 16th March 1993,
  - (b) the option consists of a right to acquire shares in a body corporate and is obtained as mentioned in section 185(1) of the Taxes Act (approved share option schemes), and
  - (c) section 17(1) would (apart from this section) apply for the purposes of calculating the consideration for the grant of the option.
- (2) The grantor of the option shall be treated for the purposes of this Act as if section 17(1) did not apply for the purposes of calculating the consideration and, accordingly, as if the amount or value of the consideration was its actual amount or value.
- (3) Where the option is granted wholly or partly in recognition of services or past services in any office or employment, the value of those services shall not be taken into account in calculating the actual amount or value of the consideration.
- (4) The preceding provisions of this section shall not affect the treatment for the purposes of this Act of the person to whom the option is granted.”

**Status:** Point in time view as at 28/07/2000. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 1993, Part II. (See end of Document for details)

### Marginal Citations

M25 1992 c. 12.

## 105 Expenditure on shares.

- (1) In section 120(6) of the Taxation of Chargeable Gains Act 1992 (increase in expenditure by reference to tax charged in relation to shares)—
  - (a) for the words “section 185(6)” there shall be substituted the words “ the applicable provision ”, and
  - (b) at the end there shall be inserted “; and in this subsection “the applicable provision” means—
    - (a) subsection (6) of section 185 of the Taxes Act (as that subsection had effect before the coming into force of section 39(5) of the <sup>M26</sup>Finance Act 1991), or
    - (b) subsection (6A) of that section.”
- (2) The amendments made by subsection (1) above shall be deemed always to have had effect.
- (3) In section 32A(5) of the <sup>M27</sup>Capital Gains Tax Act 1979 (expenditure: amounts to be included as consideration)—
  - (a) for the words “section 185(6)” there shall be substituted the words “ the applicable provision ”, and
  - (b) at the end there shall be inserted “; and in this subsection “the applicable provision” means—
    - (a) subsection (6) of section 185 of the Taxes Act (as that subsection had effect before the coming into force of section 39(5) of the <sup>M28</sup>Finance Act 1991), or
    - (b) subsection (6A) of that section.”
- (4) The <sup>M29</sup>amendments made by subsection (3) above shall be deemed to have come into force on 1st January 1992 (but shall have effect subject to the repeals made by the Taxation of Chargeable Gains Act 1992).

### Commencement Information

**II** S. 105 in force at Royal Assent. the amendments made by s. 105(1) are deemed always to have had effect, see s. 105(2); the amendments made by S. 105(3) are deemed to have come into force on 1.1.1992, see s. 105(4)

### Marginal Citations

M26 1991 c. 31.

M27 1979 c. 14.

M28 1991 c. 31.

M29 1992 c. 12.

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*Indexation: miscellaneous*

**106 Earnings cap etc: no indexation in 1993-94.**

The figure £75,000 shall be deemed to be the figure found for the year 1993-94, for the purposes of section 590C of the Taxes Act 1988, by virtue of section 590C(4) and (5) (indexation of earnings cap for retirement benefits schemes and certain other figures).

**107 Indexation of allowances etc. for 1994-95 onwards.**

- (1) The Taxes Act 1988 shall be amended as mentioned in subsections (2) to (6) below.
- (2) In section 1—
  - (a) in subsection (4) (indexation of income tax bands) for “December” (in each place) there shall be substituted “September”;
  - (b) subsection (5) (no change required for PAYE before 18th May) shall be omitted.
- (3) In section 257C—
  - (a) in subsection (1) (indexation of personal allowance and married couple’s allowance) for “December” (in each place) there shall be substituted “September”;
  - (b) subsection (2) (no change required for PAYE before 18th May) shall be omitted.
- (4) In section 590C (earnings cap for retirement benefits schemes) in subsection (5) (indexation) for “December” (in each place) there shall be substituted “September”.
- (5) In section 590C the following subsection shall be inserted after subsection (5)—
 

“(5A) If the retail prices index for the month of September preceding a year of assessment falling within subsection (4) above is not higher than it was for the previous September, the figure for that year shall be the same as the figure for the previous year of assessment.”; and accordingly, in subsection (4) of that section for “subsection (5)” there shall be substituted “subsections (5) and (5A)”.
- (6) In each of the provisions to which this subsection applies (provisions which refer to section 590C(4) and (5)) for “and (5)” there shall be substituted “to (5A)”;
- (7) In Schedule 6 to the <sup>M30</sup>Finance Act 1989 (retirement benefits schemes) in paragraphs 20(6) and 22(5) (which refer to section 590C(4) and (5) of the Taxes Act 1988) for “and (5)” there shall be substituted “to (5A)”.
- (8) This section shall have effect for the year 1994-95 and subsequent years of assessment.

**Marginal Citations**

M30 1989 c. 26.

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*Miscellaneous provisions about reliefs*

**108 Counselling services for employees.**

In Chapter VI of Part XIII of the Taxes Act 1988, after section 589 there shall be inserted the following sections—

**“589A Counselling services for employees.**

- (1) This section applies where—
  - (a) qualifying counselling services are provided to a person (the employee) in connection with the termination of the holding by him of any office or employment, and
  - (b) the termination takes place on or after 16th March 1993.
- (2) This section also applies where—
  - (a) subsection (1)(a) above applies, and
  - (b) the termination takes place before 16th March 1993 but relevant expenditure is incurred on or after that date.
- (3) Relevant expenditure is expenditure incurred in—
  - (a) providing the qualifying counselling services to the employee,
  - (b) paying or reimbursing fees for the provision to the employee of the qualifying counselling services, or
  - (c) paying or reimbursing any allowable travelling expenses incurred in connection with the provision of the qualifying counselling services to the employee.
- (4) No charge to tax under Schedule E shall arise in respect of—
  - (a) the provision of the qualifying counselling services to the employee,
  - (b) the payment or reimbursement of fees for the provision to the employee of the qualifying counselling services, or
  - (c) the payment or reimbursement of any allowable travelling expenses incurred in connection with the provision of the qualifying counselling services to the employee.
- (5) Where this section applies by virtue of subsection (2) above, subsection (4) above shall apply only to the extent that the expenditure incurred in providing the services or paying or reimbursing the fees or expenses is incurred on or after 16th March 1993.
- (6) Subsection (4) above shall apply whether or not the person who provides the services or pays or reimburses the fees or expenses is the person under whom the employee holds or held the office or employment mentioned in subsection (1) above.
- (7) Subsections (8) to (10) below apply where any relevant expenditure is incurred by the person under whom the employee holds or held the office or employment mentioned in subsection (1) above (the employer).
- (8) If and so far as the expenditure would not, apart from this subsection, be so deductible, it shall be deductible in computing for the purposes of Schedule D

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the profits or gains of the trade, profession or vocation of the employer for the purposes of which the employee is or was employed.

- (9) If the employer carries on a business and the expenses of management of the business are eligible for relief under section 75, subsection (8) above shall have effect as if for the words from “in computing” onwards there were substituted “as expenses of management for the purposes of section 75”.
- (10) Where this section applies by virtue of subsection (2) above, subsections (8) and (9) above shall apply only to the extent that the expenditure is incurred on or after 16th March 1993.

### **589B Qualifying counselling services etc.**

- (1) Subsections (2) to (4) below apply for the purposes of section 589A.
- (2) Subject to subsection (3) below, services are qualifying counselling services if—
- (a) the purpose, or main purpose, of their provision is to enable the employee to adjust to the termination of his holding of the office or employment mentioned in section 589A(1) or is to enable him to find other gainful employment (including self-employment) or is to enable him to do both,
  - (b) the services consist wholly of any or all of the following, namely, giving advice and guidance, imparting or improving skills, and providing or making available the use of office equipment or similar facilities,
  - (c) the employee has been employed by the employer full-time throughout the period of two years ending at the time when the services begin to be provided to him or, if it is earlier, at the time he ceases to be employed by the employer,
  - (d) the opportunity to receive the services, on similar terms as to payment or reimbursement of any expenses incurred in connection with their provision, is available either generally to holders or past holders of offices or employment under the employer or to a particular class or classes of such holders or past holders, and
  - (e) the services are provided in the United Kingdom.
- (3) Where paragraphs (a) to (d) of subsection (2) above are satisfied in relation to particular services but the services are provided partly in and partly outside the United Kingdom, the extent to which the services are qualifying counselling services shall be determined on a just and reasonable basis.
- (4) In relation to services, allowable travelling expenses are those which would be deductible under section 198—
- (a) on the assumption that receipt of the services is one of the duties of the employee’s office or employment, and
  - (b) if the employee has in fact ceased to be employed by the employer, on the assumption that he continues to be employed by him.
- (5) Any reference in this section or section 589A to an employee being employed by an employer is a reference to the employee holding office or employment under the employer.”

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**Status:** Point in time view as at 28/07/2000. This version of this part contains provisions that are not valid for this point in time.  
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## 109 Pre-trading expenditure.

- (1) In subsection (1) of section 401 of the Taxes Act 1988 (which gives relief for expenditure incurred within the five years before the beginning of any trade, profession or vocation), for “five” there shall be substituted “seven”.
- (2) After subsection (1) of that section there shall be inserted the following subsection—

“(1A) Where—

  - (a) a company pays any charge on income at a time before it begins to carry on any trade, and
  - (b) the payment is made wholly and exclusively for the purposes of that trade,

that payment, to the extent that it is not deducted otherwise than by virtue of this section from any profits, shall be treated for the purposes of corporation tax as paid on the day on which the trade is first carried on by the company.”
- (3) In section 338(5)(b) of that Act (payments not to be treated as charges on income), after “trade” there shall be inserted “ which is or is to be ”.
- (4) Subsections (1) and (2) above shall have effect where the time when the person begins to carry on the trade, profession or vocation falls after 31st March 1993, and subsection (3) above shall have effect in relation to payments made after that date.

## 110 Waste disposal expenditure.

- (1) In section 91A(6) of the Taxes Act 1988 (relevant licence for the purposes of restoration payments), after paragraph (b) there shall be inserted “or

  - (c) any authorisation under the <sup>M31</sup>Radioactive Substances Act 1960 or the <sup>M32</sup>Radioactive Substances Act 1993 for the disposal of radioactive waste or any nuclear site licence under the <sup>M33</sup>Nuclear Installations Act 1965.”

- (2) In section 91B of that Act (preparation expenditure for waste disposal), after subsection (10) there shall be inserted the following subsection—

“(10A) For the purposes of this section any expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated as if it had been incurred by that person on the first day on which he does carry it on and in the course of doing so.”
- (3) This section shall have effect in relation to any case where the trade in question is begun after 31st March 1993.

### Marginal Citations

- M31 1960 c. 34.  
M32 1993 c. 12.  
M33 1965 c. 57.

## 111 Business expansion scheme: loan linked investments.

- (1) After section 299 of the Taxes Act 1988 there shall be inserted the following section—

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**“299A Loan linked investments.**

- (1) An individual shall not be entitled to relief in respect of any shares in a company issued on or after 16th March 1993 if—
  - (a) there is a loan made by any person, at any time in the relevant period, to that individual or any associate of his; and
  - (b) the loan is one which would not have been made, or would not have been made on the same terms, if that individual had not subscribed for those shares or had not been proposing to do so.
- (2) References in this section to the making by any person of a loan to any individual or an associate of his include references—
  - (a) to the giving by that person of any credit to that individual or any associate of his; and
  - (b) to the assignment or assignation to that person of any debt due from that individual or any associate of his;
 and the references in section 307(6)(ca) to the making of a loan shall be construed accordingly.”
- (2) In sections 289(12)(a) and 310(1) and (10)(a) of that Act (definition of “the relevant period” and information provisions), after “299,”, in each case, there shall be inserted “299A,”.
- (3) In section 307(6) of that Act (reckonable date for the purposes of interest on relief that is withdrawn), after paragraph (c) there shall be inserted the following paragraph—
  - “(ca) in the case of relief withdrawn by virtue of section 299A in consequence of the making of any loan after the grant of the relief, the date of the making of the loan;”.
- (4) This section shall apply in relation to any case in which the claim for relief is made on or after 16th March 1993.

**112 Employers’ pension contributions.**

- (1) In section 592(4) of the Taxes Act 1988 (employers’ contributions to exempt approved schemes), at the end there shall be inserted “ but no other sum shall for those purposes be allowed to be deducted as an expense, or expense of management, in respect of the making, or any provision for the making, of any contributions under the scheme. ”
- (2) Subsection (1) above shall have effect in the case of any employer in relation to, as the case may be—
  - (a) any accounting period of that employer ending with a day after 5th April 1993; or
  - (b) any year of assessment the employer’s basis period for which ends with a day after that date.
- (3) Where—
  - (a) there is after 5th April 1993 an actual payment by an employer of a contribution under an exempt approved scheme,
  - (b) that payment would, apart from this subsection, be allowed to be deducted as an expense, or expense of management, of the employer in relation to any chargeable period in relation to which subsection (1) above has effect, and



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- (c) the total of previously allowed deductions exceeds the relevant maximum, the amount allowed to be so deducted in respect of the payment mentioned in paragraph (a) above and of any other actual payments of contributions under the scheme which, having been made after 5th April 1993, fall within paragraph (b) above in relation to the same chargeable period shall be reduced by whichever is the smaller of the excess and the amount which reduces the deduction to nil.
- (4) In relation to any such actual payment by an employer of a contribution under an exempt approved scheme as would be allowed to be deducted as mentioned in subsection (3) above in relation to any chargeable period-
- (a) the reference in that subsection to the total of previously allowed deductions is a reference to the aggregate of every amount in respect of the making, or any provision for the making, of that or any other contributions under the scheme, which has been allowed to be deducted as an expense, or expense of management, of that person in relation to a previous chargeable period; and
- (b) the reference to the relevant maximum is a reference to the amount which would have been that aggregate if the restriction on deductions imposed by virtue of subsection (1) above had been applied in relation to every previous chargeable period;
- and for the purposes of this subsection an amount the deduction of the whole or any part of which falls to be taken into account as allowed in relation to more than one chargeable period shall be treated as if the amount allowed were a different amount in the case of each of those periods.
- (5) For the purposes of this section any payment which is treated under subsection (6) of section 592 of the Taxes Act 1988 as spread over a period of years shall be treated as actually paid at the time when it is treated as paid in accordance with that subsection.
- (6) After subsection (6) of section 592 of the Taxes Act 1988 there shall be inserted the following subsection—
- “(6A) Where any sum is paid to the trustees of the scheme in or towards the discharge of any liability of an employer under section 58B of the <sup>M34</sup>Social Security Pensions Act 1975 or section 144 of the Pension Schemes Act 1993 (deficiencies in the assets of a scheme) or under Article 68B of the <sup>M35</sup>Social Security Pensions (Northern Ireland) Order 1975 or section 140 of the Pension Schemes (Northern Ireland) Act 1993 (which contain corresponding provision for Northern Ireland), the payment of that sum—
- (a) shall be treated for the purposes of this section as an employer’s contribution under the scheme; and
- (b) notwithstanding (where it is the case) that the employer’s trade, profession, vocation or business is permanently discontinued before the making of the payment, shall be allowed, in accordance with subsection (4) above, to be deducted as such a contribution to the same extent as it would have been allowed but for the discontinuance and as if it had been made on the last day on which the trade, profession, vocation or business was carried on.”; and this subsection shall have effect in relation to any payment made on or after the day on which this Act is passed.
- (7) In this section—
- “basis period”, in relation to any person, means a period on the profits or gains of which income tax for any year of assessment falls to be finally

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computed under Case I or II of Schedule D in respect of the trade, profession or vocation of that person (being the later period in any case where the profits and gains of an earlier period are taken to be the profits and gains of a later period); and

“exempt approved scheme” has the meaning given by section 592(1) of the Taxes Act 1988.

#### **Marginal Citations**

**M34** 1975 c. 60.

**M35** S.I. 1975/1503 (N.I. 15).

### *Capital allowances*

#### **113 Initial allowances: industrial buildings and structures.**

- (1) In Chapter I of Part I of the <sup>M36</sup>Capital Allowances Act 1990, after section 2 there shall be inserted the following section—

##### **“2A Initial allowances: contracts entered into between October 1992 and November 1993.**

- (1) In relation to expenditure to which this section applies, section 1 shall have effect with the following modifications, that is to say—
- (a) so much of that section as relates to the requirement that the site in question is at a material time in an enterprise zone, namely—
    - (i) paragraph (b) of subsection (1) and the reference to that paragraph in subsection (1A);
    - (ii) paragraph (b) of subsection (1A); and
    - (iii) subsection (11),
 shall be omitted;
  - (b) for the reference in subsection (1) to 100 per cent. there shall be substituted a reference to 20 per cent.; and
  - (c) subsection (2) shall have effect with the omission of the words “and to a commercial building or structure”.
- (2) No initial allowance shall be made under this section in respect of any expenditure on the construction of a building or structure unless it is or is to be first used on or before 31st December 1994; and in a case where—
- (a) an initial allowance is granted under this section in respect of any expenditure on the construction of a building or structure; and
  - (b) by the end of that day that building or structure has not come to be used,
- that allowance shall be withdrawn and all such assessments and adjustments of assessments to tax shall be made as may be necessary in consequence of its being withdrawn.
- (3) Subject to subsection (5) below, this section applies to any capital expenditure incurred under a contract which—
- (a) is entered into either—

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- (i) in the period beginning with 1st November 1992 and ending with 31st October 1993; or
    - (ii) for the purpose of securing that obligations under a contract entered into in that period are complied with;
  - but
  - (b) is not entered into for the purpose of securing that obligations under a contract entered into before the beginning of that period are complied with.
- (4) Subject to subsection (5) below, this section also applies to any additional VAT liability incurred in respect of expenditure falling within subsection (3) above.
- (5) This section does not apply to—
- (a) any expenditure incurred, or incurred under a contract entered into, at a time when the site of the building or structure is in an enterprise zone, being a time not more than 10 years after the site was first included in the zone;
  - (b) expenditure falling in relation to expenditure so incurred within section 1(1A); or
  - (c) expenditure to which section 2 applies.
- (6) Subsection (5) above shall have effect subject to sections 10C and 17A.”
- (2) In section 4(9) of that Act, in the definition of “capital expenditure”, for “or 10B” there shall be substituted “ 10B or 10C ”.
- (3) In section 10(3A) of that Act (provisions not to apply in cases falling within section 10A)—
- (a) after “apply” there shall be inserted “ for the purpose of determining whether any expenditure is expenditure to which section 2A applies or ”; and
  - (b) after “10A” there shall be inserted “ or 10C ”.
- (4) After section 10B of that Act there shall be inserted the following section—

**“10C Purchases of buildings and structures: allowances under section 2A.**

- (1) This section shall apply (subject to subsection (2) below) where—
- (a) expenditure is incurred on the construction of a building or structure ( “actual expenditure”);
  - (b) some or all of that expenditure is expenditure to which section 2A applies or would be such expenditure if it were capital expenditure; and
  - (c) before the building or structure is used, the relevant interest in it is sold.
- (2) In relation to any case in which the relevant interest is sold in pursuance of a contract entered into in the period beginning with 1st November 1992 and ending with 31st October 1993 by a person who—
- (a) carries on a trade which consists, in whole or in part, in the construction of buildings or structures with a view to their sale; and
  - (b) has been entitled to that interest since before 1st November 1992,

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section 2A(3) above shall have effect for the purposes of subsection (1)(b) above and subsections (6) and (11) below as if for the words from “capital expenditure” onwards there were substituted “capital expenditure incurred under a contract entered into either before 1st November 1993 or for the purpose of securing that obligations under a contract entered into before that date are complied with.”

- (3) Where this section applies—
- (a) the actual expenditure shall be left out of account for the purposes of sections 1 to 8; but
  - (b) subject to subsections (9) to (11) below, the person who buys the relevant interest shall be deemed for those purposes to have incurred, on the date when the purchase price becomes payable, expenditure on the construction of the building or structure (“deemed expenditure”) equal to the actual expenditure or to the net price paid by him for that interest, whichever is the less.
- (4) The deemed expenditure shall be regarded as comprising a section 2A element and a residual element.
- (5) The section 2A element of the deemed expenditure shall be calculated in accordance with the formula—

$$A \times \frac{B}{C}$$

- (6) In subsection (5) above—
- A is the deemed expenditure;
  - B is so much of the actual expenditure as is expenditure to which section 2A applies or expenditure that would be such expenditure if it were capital expenditure; and
  - C is the actual expenditure.
- (7) The residual element of the deemed expenditure shall be so much (if any) of the deemed expenditure as does not comprise the section 2A element.
- (8) Notwithstanding the provisions of subsection (3)(b) above—
- (a) the section 2A element of the deemed expenditure shall be treated for the purpose only of determining entitlement to allowances as expenditure to which that section applies; and
  - (b) the residual element of the deemed expenditure shall be treated for that purpose as expenditure which is not expenditure to which that section applies.
- (9) Where the relevant interest in the building or structure is sold more than once before the building or structure is used, subsections (2) and (3)(b) above shall have effect only in relation to the last of those sales.
- (10) Where the actual expenditure was incurred by a person carrying on a trade which consists, in whole or in part, in the construction of buildings or structures with a view to their sale and, before the building or structure is used,

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he sells the relevant interest in it in the course of that trade or, as the case may be, of that part of that trade, then—

- (a) if that sale is the only sale of the relevant interest before the building or structure is used, paragraph (b) of subsection (3) above shall have effect as if the words “the actual expenditure or to” and “whichever is the less” were omitted; and
- (b) in any other case, that paragraph shall have effect as if the reference to the actual expenditure were a reference to the price paid on that sale.

(11) Where some of the actual expenditure is expenditure falling within subsection (1)(b) of section 10A and some or all of the remainder is expenditure to which section 2A applies or to which section 2A would apply if it were capital expenditure, section 10A and this section shall both have effect but as if—

- (a) subsections (3), (9) and (10) of this section were omitted;
- (b) references in this section to the deemed expenditure were references to the expenditure which, in accordance with subsections (2), (8) and (9) of section 10A, is the deemed expenditure for the purposes of that section; and
- (c) the section 2A element of the deemed expenditure were comprised in the non-enterprise zone element of that expenditure.”

(5) In section 17A of that Act (exclusion of expenditure incurred more than 20 years after a site is included in an enterprise zone), after “sections 1(1)(b)” there shall be inserted “2A(5)(a)”.

(6) In section 18(14) of that Act (application of section 18(13) to certain buildings), for “qualifying hotels to which this Part applies by virtue of section 7” there shall be substituted “any qualifying hotel”.

(7) This section shall have effect in relation to every chargeable period which, or the basis period for which, ends after 31st October 1992.

#### **Marginal Citations**

**M36** 1990 c. 1.

### **114 Initial allowances: agricultural buildings etc.**

- (1) Schedule 12 to this Act (which makes provision, which broadly corresponds to that made in relation to industrial buildings and structures by section 113 above, for the making of initial allowances in respect of expenditure on the construction of agricultural buildings, fences and other works) shall have effect.
- (2) This section and the amendments made by Schedule 12 to this Act shall have effect in relation to every chargeable period which, or the basis period for which, ends after 31st October 1992.

### **115 First year allowances: machinery and plant.**

- (1) In subsection (1) of section 22 of the <sup>M37</sup>Capital Allowances Act 1990 (first-year allowances), in the words after paragraph (b), after “which” there shall be inserted “, in

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the case of expenditure to which this section applies by virtue only of subsection (3B) below, shall be of an amount equal to 40 per cent. of that expenditure and, in any other case, ”.

(2) After subsection (3A) of that section there shall be inserted the following subsection—

“(3B) This section applies to—

- (a) any expenditure which, disregarding any effect of section 83(2) on the time at which it is to be treated as incurred, is incurred by any person in the period beginning with 1st November 1992 and ending with 31st October 1993; and
- (b) any additional VAT liability incurred in respect of expenditure to which this section applies by virtue of paragraph (a) above.”

(3) In subsection (4)(c) of that section (no first-year allowance on the provision of machinery or plant for leasing), after “(6)” there shall be inserted “ (6A) ”; and after subsection (6) of that section there shall be inserted the following subsection—

“(6A) Paragraph (c) of subsection (4) above does not apply to expenditure to which this section applies by virtue only of subsection (3B) above; but (subject to section 43) no first-year allowance shall be made by virtue of subsection (3B) above in respect of any expenditure on the provision of machinery or plant for leasing if—

- (a) it appears that the expenditure is such that section 42 would have effect with respect to it; or
- (b) each of the following conditions is satisfied, that is to say—
  - (i) the expenditure is incurred on or after 14th April 1993;
  - (ii) the expenditure is expenditure in respect of which paragraph (c) of subsection (4) above would, if it applied, prevent the making of any first year allowance; and
  - (iii) the person to whom the machinery or plant is to be or is leased, or a person who (within the meaning of section 839 of the principal Act) is connected with that person, used the machinery or plant for any purpose at any time before its provision for leasing.”

(4) Schedule 13 to this Act (which makes further amendments of that Act of 1990 in connection with the first-year allowances for which provision is made by this section) shall have effect.

(5) This section and the amendments made by Schedule 13 to this Act shall have effect (subject to paragraph 12(3) of that Schedule) in relation to every chargeable period which, or the basis period for which, ends after 31st October 1992.

**Marginal Citations**

M37 1990 c. 1.

**116 Leasing.**

(1) In the second sentence in section 40(4) of the <sup>M38</sup>Capital Allowances Act 1990 (shortening of “requisite period” while assets used for qualifying purpose), after “effect” there shall be inserted “ for the purposes of sections 31(2) and 37(6) ”.

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- (2) In section 42(1) of that Act (assets leased to non-residents), for paragraph (b) there shall be substituted the following paragraph—
- “(b) does not use the machinery or plant exclusively for earning such profits or gains as are chargeable to tax (whether as profits or gains arising from a trade carried on in the United Kingdom or by virtue of section 830(4) of the principal Act).”
- (3) In section 50 of that Act (interpretation of Chapter V), after subsection (3) there shall be inserted the following subsection—
- “(3A) References in this Chapter to profits or gains chargeable to tax shall not include any of those arising to a person who, under arrangements specified in an Order in Council making any such provisions as are referred to in section 788 of the principal Act (double taxation arrangements), is afforded, or is entitled to claim, any relief from the tax chargeable thereon.”
- (4) This section shall have effect in relation to the use of machinery or plant for leasing under leases entered into on or after 16th March 1993.

**Marginal Citations**

M38 1990 c. 1.

**117 Transactions between connected persons etc.**

- (1) Section 158 of the <sup>M39</sup>Capital Allowances Act 1990 (election exercisable in the case of transactions between connected persons etc.) shall be amended as follows.
- (2) In paragraph (a) of subsection (2) (sum at which industrial building or structure is treated as sold)—
- (a) after the word “structure,”, in the first place where it occurs, there shall be inserted “ a qualifying hotel or a commercial building or structure, ”; and
- (b) for the words “or structure”, in the second place where they occur, there shall be substituted “ structure or hotel ”.
- (3) After paragraph (c) of that subsection there shall be inserted the following paragraph—
- “(d) in the case of an asset representing allowable scientific research expenditure of a capital nature—
- (i) if the expenditure is expenditure in respect of which an allowance is made under section 137, nil; and
- (ii) in any other case, the amount of the expenditure.”
- (4) In subsection (3) (cases where election may not be made), for paragraph (a) there shall be substituted the following paragraph—
- “(a) if the circumstances of the sale (including those of the parties to it) are such that an allowance or charge under Part I, III, IV, VI or VII which (apart from those circumstances) would or might fall, in consequence of the sale, to be made to or on any of those parties will not be capable of so falling.”
- (5) This section shall have effect in relation to sales and other transfers on or after 16th March 1993 other than one which is in pursuance of—

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- (a) a contract entered into before that date; or
- (b) a contract entered into for the purpose of securing that obligations under a contract entered into before that date are complied with.

**Marginal Citations**

M39 1990 c. 1.

*Miscellaneous*

**118 Scottish trusts.**

- (1) Where—
  - (a) any of the income of a trust having effect under the law of Scotland is income to which a beneficiary of the trust would have an equitable right in possession if that trust had effect under the law of England and Wales, and
  - (b) the trustees of that trust are resident in the United Kingdom,
 the rights of that beneficiary shall be deemed for the purposes of the Income Tax Acts to include such a right to that income notwithstanding that no such right is conferred according to the law of Scotland.
- (2) This section shall have effect in relation to the income of any trust for the year 1993–94 or any subsequent year of assessment.

**119 Controlled foreign companies.**

- (1) In section 750(1) of the Taxes Act 1988 (meaning of lower level of taxation for purposes of provisions relating to controlled foreign companies) for “one-half” there shall be substituted “three-quarters”.
- (2) Subsection (1) above shall apply in relation to accounting periods beginning on or after 16th March 1993.
- (3) Where a company is by virtue of section 749(1) or (2) of the Taxes Act 1988 regarded as resident in a territory outside the United Kingdom and (apart from this section)—
  - (a) an accounting period of the company would begin before 16th March 1993 and end on or after that date, and
  - (b) the company would not be considered to be subject, by virtue of section 750(1) of that Act, to a lower level of taxation in that accounting period in the territory in which it is regarded as resident,
 for the purposes of Chapter IV of Part XVII of that Act that accounting period shall be treated as ending on 15th March 1993.

**120 Pay and file: miscellaneous amendments.**

Schedule 14 to this Act (which makes various amendments of the <sup>M40</sup>Taxes Management Act 1970, the Taxes Act 1988 and the <sup>M41</sup>Finance Act 1989 with a view to, or in connection with, the introduction of “pay and file”) shall have effect.



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#### **Marginal Citations**

**M40** 1970 c. 9.

**M41** 1989 c. 26.

### **121 Repayments and payments to friendly societies.**

- (1) The Treasury may by regulations provide, in relation to accounting periods beginning on or after 1st January 1994, for Schedule 19AB of the Taxes Act 1988 (payments on account of exempt pension business) to have effect, with such modifications and exceptions as may be specified in the regulations, in relation to any business to which this section applies as it has effect in relation to the pension business of an insurance company.
- (2) This section applies to any business of a friendly society the profits arising from which are exempt from income tax and corporation tax under section 460(1), 461(1) or 461B(1) of the Taxes Act 1988 (life or endowment and other business), not being a business carried on by a friendly society all of whose profits are so exempt.
- (3) Regulations under this section may make different provision for different cases.
- (4) This section shall be without prejudice to section 463(1) of the Taxes Act 1988 (application of the Corporation Tax Acts to life or endowment business carried on by friendly societies).

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

**C10** S. 121 modified (31.7.1997) by 1997 c. 58, s. 23, **Sch. 3 para. 12** (with s. 3(3))

### **122 Application of Income Tax Acts etc. to public departments.**

- (1) In subsection (2) of section 829 of the Taxes Act 1988 (restriction on application of Income Tax Acts to public departments), at the end there shall be inserted “ unless it is tax which would not have been so borne but for a failure by a public office or department of the Crown to make a deduction required by virtue of subsection (1) above. ”
- (2) The provisions of Parts IX and X of the Taxes Management Act 1970 (interest and penalties) shall apply in relation to public offices and departments of the Crown for the purposes, so far as they so apply, of the other provisions of that Act and of the provisions of the Income Tax Acts mentioned in section 829(1) of the Taxes Act 1988.
- (3) This section shall have effect in relation to the year 1993-94 and subsequent years of assessment.

### **123 Expenditure involving crime.**

- (1) The following section shall be inserted after section 577 of the Taxes Act 1988—

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**“577A Expenditure involving crime.**

- (1) In computing profits or gains chargeable to tax under Schedule A or Schedule D, no deduction shall be made for any expenditure incurred in making a payment the making of which constitutes the commission of a criminal offence.
  - (2) Such expenditure shall not be included in computing any expenses of management in respect of which relief may be given under the Tax Acts.”
- (2) This section shall apply in relation to expenditure incurred on or after 11th June 1993.

**124 Expenses of Members of Parliament.**

- (1) Section 200 of the Taxes Act 1988 (expenses of Members of Parliament) shall become subsection (1) of that section and the following subsection shall be inserted after that subsection—
  - “(2) A sum which is paid to a Member of the House of Commons in accordance with any resolution of that House providing for Members of that House to be reimbursed in respect of the cost of, and any additional expenses incurred in, travelling between the United Kingdom and any European Community institution in Brussels, Luxembourg or Strasbourg shall not be regarded as income for any purpose of the Income Tax Acts.”
- (2) This section shall apply in relation to sums paid on or after 1st January 1992.
- (3) Any such adjustment (whether by way of discharge or repayment of tax, the making of an assessment or otherwise) as is appropriate in consequence of this section may be made.

**CHAPTER II**

EXCHANGE GAINS AND LOSSES

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

- C11** Pt. II Chapter II (ss. 125-170) modified (1.5.1995) by 1988 c. 1, **Sch. 24 para. 19(2)** (as inserted (1.5.1995) by 1995 c. 4, s. 133, **Sch. 25 paras. 1, 6(5)**)  
 Pt. II Chapter II (ss. 125-170) restricted (31.7.1998) by 1988 c. 1, **Sch. 28AA para. 8** (as inserted (31.7.1998) by 1998 c. 36, s. 108, **Sch. 16 para. 8(1)(a)**)  
 Pt. II Chapter II (ss. 125-170): power to amend conferred (3.5.1994) by 1994 c. 9, s. **177(6)(b)**  
 Pt. II Chapter II (ss. 125-170) excluded (3.5.1994) by 1994 c. 9, **ss. 226(2), 230**  
 Pt. II Chapter II (ss. 125-170) modified (19.9.1994) by 1994 c. 21, s. 21, **Sch. 4 Pt. I para. 23(2)** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**  
 Pt. II Chapter II (ss. 125-170) modified (23.3.1995) by S.I. 1994/3226, **reg. 3(2)**  
 Pt. II Chapter II (ss. 125-170) applied (23.3.1995) by S.I. 1994/3231, **reg. 2(1)**  
 Pt. II Chapter II (ss. 125-170) modified (29.4.1996) by 1996 c. 8, s. 105, **Sch. 15 Pt. I para. 22(1)** (with ss. 80-105)
- C12** Pt. II Chapter II to be construed with 1994 c. 31, **Sch. 4 Pt. I para. 23** (19.9.1994) by 1994 c. 21, s. 21, **Sch. 4 Pt. I para. 23(5)**; S.I. 1994/2189, art. 2, **Sch.**

*Status:* Point in time view as at 28/07/2000. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Finance Act 1993, Part II. (See end of Document for details)

### *Accrual of gains and losses*

#### **125 Accrual on qualifying assets and liabilities.**

- (1) Subsection (2) below applies where a qualifying company holds a qualifying asset and there is a difference between—
  - (a) the local currency equivalent, at the translation time with which an accrual period as regards the asset begins, of the basic valuation of the asset, and
  - (b) the local currency equivalent, at the translation time with which the accrual period ends, of the basic valuation of the asset.
- (2) There is as regards the asset an exchange difference for the accrual period, and—
  - (a) if the difference represents an increase over the period, an initial exchange gain of an amount equal to the difference accrues to the company as regards the asset for the period;
  - (b) if the difference represents a decrease over the period, an initial exchange loss of an amount equal to the difference accrues to the company as regards the asset for the period.
- (3) Subsection (4) below applies where a qualifying company owes a qualifying liability and there is a difference between—
  - (a) the local currency equivalent, at the translation time with which an accrual period as regards the liability begins, of the basic valuation of the liability, and
  - (b) the local currency equivalent, at the translation time with which the accrual period ends, of the basic valuation of the liability.
- (4) There is as regards the liability an exchange difference for the accrual period, and—
  - (a) if the difference represents a decrease over the period, an initial exchange gain of an amount equal to the difference accrues to the company as regards the liability for the period;
  - (b) if the difference represents an increase over the period, an initial exchange loss of an amount equal to the difference accrues to the company as regards the liability for the period.

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

**C13** Ss. 125-127 modified (1.5.1995) by 1988 c. 1, Sch. 24 para. 14 (as inserted (1.5.1995) by 1995 c. 4, s. 133, Sch. 25 paras. 1, 6(5))

#### **126 Accrual on currency contracts.**

- (1) This section applies where a qualifying company enters into a contract (a currency contract) under which—
  - (a) it becomes entitled to a right and subject to a duty to receive payment at a specified time of a specified amount of one currency (the first currency), and
  - (b) it becomes entitled to a right and subject to a duty to pay in exchange and at the same time a specified amount of another currency (the second currency).

<sup>F32</sup>(1A) In deciding whether a contract falls within subsection (1) above it is immaterial that the rights and duties there mentioned may be exercised and discharged by a payment made to or, as the case may require, by the qualifying company of an amount (in

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whatever currency) designed to represent any difference in value at the specified time between the two payments referred to in that subsection.]

- (2) Subsection (3) below applies if there is a difference between—
- (a) the local currency equivalent, at the translation time with which an accrual period as regards the contract begins, of the amount of the first currency, and
  - (b) the local currency equivalent, at the translation time with which the accrual period ends, of the amount of the first currency.
- (3) There is as regards the contract an exchange difference for the accrual period, and—
- (a) if the difference represents an increase over the period, an initial exchange gain of an amount equal to the difference accrues to the company as regards the contract for the period;
  - (b) if the difference represents a decrease over the period, an initial exchange loss of an amount equal to the difference accrues to the company as regards the contract for the period.
- (4) Subsection (5) below applies if there is a difference between—
- (a) the local currency equivalent, at the translation time with which an accrual period as regards the contract begins, of the amount of the second currency, and
  - (b) the local currency equivalent, at the translation time with which the accrual period ends, of the amount of the second currency.
- (5) There is as regards the contract an exchange difference for the accrual period, and—
- (a) if the difference represents a decrease over the period, an initial exchange gain of an amount equal to the difference accrues to the company as regards the contract for the period;
  - (b) if the difference represents an increase over the period, an initial exchange loss of an amount equal to the difference accrues to the company as regards the contract for the period.
- [<sup>F33</sup>(6) Subsection (7) below applies where—
- (a) under a contract a qualifying company becomes entitled to a right and subject to a duty to receive or make a payment at a specified time, and
  - (b) the amount of the payment (in whatever currency) is computed in such a way as to be equal to the amount of the payment referred to in subsection (1A) above which would have fallen to be computed if—
    - (i) the qualifying company had been entitled and subject as mentioned in subsection (1) above, and
    - (ii) a payment such as is referred to in subsection (1A) above were to be made to or by the qualifying company.
- (7) For the purposes of this Chapter—
- (a) the qualifying company shall be deemed to have become entitled and subject as mentioned in subsection (1) above under the contract referred to in subsection (6) above;
  - (b) the payment made under the contract shall be treated as if it were a payment falling within subsection (1A) above in the exercise and discharge of the rights and duties to which the qualifying company is deemed to have become entitled and subject by virtue of paragraph (a) above.]

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#### Textual Amendments

- F32** S. 126(1A) inserted (3.5.1994) by 1994 c. 9, s. 115(1)  
**F33** S. 126(6)(7) added (23.3.1995) by S.I. 1994/3233, art. 3

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

- C14** Ss. 125-127 modified (1.5.1995) by 1988 c. 1, Sch. 24 para. 14 (as inserted (1.5.1995) by 1995 c. 4, s. 133, Sch. 25 paras. 1, 6(5))  
S. 126: power to amend conferred (3.5.1994) by 1994 c. 9, s. 177(6)(a)

### 127 Accrual on debts whose amounts vary.

(1) In a case where—

- (a) a qualifying company holds an asset consisting of a right to settlement under a qualifying debt or owes a liability consisting of a duty to settle under such a debt, and
- (b) the nominal amount of the debt outstanding varies during an accrual period (whether because of an increase or a decrease or both),

the following provisions of this section shall apply for the period and section 125 above shall not.

[<sup>F34</sup>(1A) For the purposes of this section if, in the case of any debt—

- (a) an amount in respect of any discount or premium relating to that debt is treated, on an accruals basis of accounting, as accruing at any time for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships), or
- (b) any such amount would be treated as so accruing if the authorised method of accounting used for those purposes as respects the loan relationship relating to that debt were an accruals basis of accounting, instead of a mark to market basis,

then, for the purposes of this section, there shall be deemed to be such a variation at that time of the nominal amount of the debt outstanding as is specified in subsection (1B) below.

(1B) That variation is—

- (a) if the amount mentioned in paragraph (a) or (b) of subsection (1A) above relates to a discount, a variation that increases the nominal amount of the debt outstanding by the amount so mentioned; and
- (b) if the amount so mentioned relates to a premium, a variation that decreases the nominal amount of the debt outstanding by the amount so mentioned.]

(2) In such a case—

- (a) take the local currency equivalent, at the translation time with which the accrual period begins, of the nominal amount of the debt then outstanding;
- (b) take the local currency equivalent, at each time (if any) immediately after the nominal amount of the debt outstanding increases in the accrual period, of the amount by which it then increases;
- (c) take the local currency equivalent, at each time (if any) immediately after the nominal amount of the debt outstanding decreases in the accrual period, of the amount by which it then decreases;

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- (d) take the figure found under paragraph (a) above, add each figure found under paragraph (b) above, subtract each figure found under paragraph (c) above, and call the resulting figure the first amount;
  - (e) take the local currency equivalent, at the translation time with which the accrual period ends, of the nominal amount of the debt then outstanding, and call the figure so found the second amount.
- (3) Where the qualifying company has a right to settlement under the debt the following provisions apply in relation to the asset consisting of the right—
- (a) if the second amount exceeds the first an initial exchange gain of an amount equal to the difference between them accrues to the company as regards the asset for the accrual period;
  - (b) if the second amount is less than the first an initial exchange loss of an amount equal to the difference between them accrues to the company as regards the asset for the accrual period.
- (4) Where the qualifying company has a duty to settle under the debt the following provisions apply in relation to the liability consisting of the duty—
- (a) if the second amount is less than the first an initial exchange gain of an amount equal to the difference between them accrues to the company as regards the liability for the accrual period;
  - (b) if the second amount exceeds the first an initial exchange loss of an amount equal to the difference between them accrues to the company as regards the liability for the accrual period.
- (5) If the first amount has a negative value, for the purposes of this section the second amount (however small its value) shall be taken to exceed the first amount (however large its value).
- (6) Subsection (7) below modifies the preceding provisions of this section in their application to an asset or liability where there is a difference between—
- (a) the basic valuation of the asset or liability, and
  - (b) the nominal amount of the debt outstanding at the translation time with which the accrual period begins.
- (7) In such a case—
- (a) the reference in subsection (2)(a) above to the nominal amount of the debt outstanding shall be taken to be a reference to the basic valuation of the asset or liability;
  - (b) the reference in subsection (2)(c) above to the amount by which the nominal amount of the debt outstanding decreases shall be taken to be a reference to the amount found under subsection (8) below;
  - (c) the reference in subsection (2)(e) above to the nominal amount of the debt outstanding shall be taken to be a reference to the amount found under subsection (10) below.
- (8) The amount referred to in subsection (7)(b) above is the amount given by the formula—

$$A \times \frac{B}{C}$$

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- (9) For the purposes of subsection (8) above—
- A is the basic valuation of the asset or liability;
  - B is the amount by which, at the time of the decrease mentioned in subsection (2) (c) above, the nominal amount of the debt outstanding then decreases;
  - C is the nominal amount of the debt outstanding at the translation time with which the accrual period begins.
- (10) The amount referred to in subsection (7)(c) above is the amount given by the formula—

$$D + E - F$$

- (11) For the purposes of subsection (10) above—
- D is the basic valuation of the asset or liability;
  - E is the amount (if any) by which the nominal amount of the debt outstanding has at any time increased in the accrual period or, if it has increased more than once, the aggregate of such amounts;
  - F is the amount (if any) found under subsection (8) above or, if the nominal amount of the debt outstanding has decreased more than once in the accrual period, the aggregate of the amounts so found.

#### Textual Amendments

**F34** S. 127(1A)(1B) inserted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 67** (with ss. 80-105)

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

**C15** Ss. 125-127 modified (1.5.1995) by 1988 c. 1, **Sch. 24 para. 14** (as inserted (1.5.1995) by 1995 c. 4, s. 133, **Sch. 25 paras. 1, 6(5)**)  
S. 127 modified (19.9.1994) by 1994 c. 21, s. 21, **Sch. 4 Pt. I para. 23(3)** (with s. 40(7); S.I. 1994/2189, **art. 2 Sch.**)

### *Trading gains and losses*

#### **128 Trading gains and losses.**

- (1) Subsections (2) to (4) below apply where—
- (a) as regards an asset, liability or contract an initial exchange gain accrues to a qualifying company for an accrual period, and
  - (b) at any time in the period the asset or contract was held, or the liability was owed, by the company for the purposes of a trade or part of a trade carried on by it.
- (2) If throughout the accrual period the asset or contract was held, or the liability was owed, by the company solely for the purposes of the trade or part the whole of the gain is an exchange gain of the trade or part for the period.
- (3) In any other case the gain shall be apportioned on a just and reasonable basis and so much as is attributable to the trade or part is an exchange gain of the trade or part for the period.

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- (4) The company shall be treated for the purposes of the Tax Acts as—
- (a) receiving in respect of the trade or part an amount equal to the exchange gain of the trade or part for the accrual period, and
  - (b) receiving the amount in respect of the accounting period which constitutes the accrual period or in which the accrual period falls.
- (5) Subsections (6) to (8) below apply where—
- (a) as regards an asset, liability or contract an initial exchange loss accrues to a qualifying company for an accrual period, and
  - (b) at any time in the period the asset or contract was held, or the liability was owed, by the company for the purposes of a trade or part of a trade carried on by it.
- (6) If throughout the accrual period the asset or contract was held, or the liability was owed, by the company solely for the purposes of the trade or part the whole of the loss is an exchange loss of the trade or part for the period.
- (7) In any other case the loss shall be apportioned on a just and reasonable basis and so much as is attributable to the trade or part is an exchange loss of the trade or part for the period.
- (8) The company shall be treated for the purposes of the Tax Acts as—
- (a) incurring in the trade or part a loss of an amount equal to the exchange loss of the trade or part for the accrual period, and
  - (b) incurring the loss in respect of the accounting period which constitutes the accrual period or in which the accrual period falls.
- [<sup>F35</sup>(9) For the purposes of this section a part of a trade is any part of a trade which is treated for the purposes of section 93 above as if it were a separate business for the relevant accounting period; and the relevant accounting period is the accounting period which constitutes the accrual period concerned or in which that accrual period falls.]
- (10) The preceding provisions of this section apply—
- (a) whether the asset or contract is at any time held, or the liability is at any time owed, on revenue account or capital account, and
  - (b) notwithstanding anything in section 74 of the Taxes Act 1988 (general rules as to deductions not allowable).
- [<sup>F36</sup>(10A) In a case where—
- (a) an exchange gain of a trade or part of a trade or an exchange loss of a trade or part of a trade would (apart from this subsection) accrue to a company as regards a liability consisting of a duty to settle under a qualifying debt, and
  - (b) a charge is allowed to the company in respect of the debt under section 338 of the Taxes Act 1988 (allowance of charges on income and capital),
- the exchange gain or loss shall be treated as not accruing.
- (10B) A charge shall be treated as allowed as mentioned in subsection (10A) above if—
- (a) it would be so allowed if the company's total profits were sufficient,
  - (b) it would be so allowed if the duty mentioned in that subsection were settled, and if in settling it payment were made out of the company's profits brought into charge to corporation tax, or



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- (c) it would be so allowed if the facts were as mentioned in both paragraph (a) and paragraph (b) above.]
- (11) In a case where—
  - (a) an accounting period of a qualifying company begins on or after its commencement day, and
  - (b) but for this subsection, a gain or loss falling within subsection (12) below would be taken into account in calculating for the purposes of corporation tax the profits or losses for the period of a trade carried on by the company,the gain or loss shall be left out of account in calculating the profits or losses.
- (12) A gain or loss falls within this subsection if it—
  - (a) accrues to the company, otherwise than by virtue of this Chapter, as regards a qualifying asset or liability or a currency contract, and
  - (b) is attributable to fluctuations in currency exchange rates;and it is immaterial whether the gain or loss is realised.

#### Textual Amendments

- F35** S. 128(9) substituted (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, s. 106(6)
- F36** S. 128(10A)(10B) inserted (retrospectively) by 1995 c. 4, s. 130, Sch. 24 Pt. I paras. 1, 2

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

- C16** S. 128 modified (23.3.1995) by S.I. 1994/3226, reg. 15(5)
- C17** S. 128 applied (23.3.1995) by S.I. 1994/3229, reg. 3(2)(a)

### *Non-trading gains and losses*

#### **129 Non-trading gains and losses: general.**

- (1) In a case where—
  - (a) as regards an asset, liability or contract an initial exchange gain accrues to a qualifying company for an accrual period, and
  - (b) the whole or part of the gain is not an exchange gain of a trade or part of a trade for the period,the whole or part (as the case may be) is a non-trading exchange gain for the period.
- (2) The company shall be treated as—
  - (a) receiving in respect of the asset, liability or contract an amount equal to the non-trading exchange gain for the accrual period, and
  - (b) receiving the amount in the accounting period which constitutes the accrual period or in which the accrual period falls;[<sup>F37</sup>and the rule in section 130(1) below shall apply].
- (3) In a case where—
  - (a) as regards an asset, liability or contract an initial exchange loss accrues to a qualifying company for an accrual period, and
  - (b) the whole or part of the loss is not an exchange loss of a trade or part of a trade for the period,

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the whole or part (as the case may be) is a non-trading exchange loss for the period.

(4) The company shall be treated as—

- (a) incurring in respect of the asset, liability or contract a loss of an amount equal to the non-trading exchange loss for the accrual period, and
- (b) incurring the loss in the accounting period which constitutes the accrual period or in which the accrual period falls;

[<sup>F38</sup>and the rule in section 130(2) below shall apply].

<sup>F39</sup>(5) .....

<sup>F39</sup>(6) .....

(7) In a case where—

- (a) a non-trading exchange gain or loss would (apart from this subsection) accrue as regards an asset consisting of a right to settlement under a qualifying debt, and
- (b) the right is a right to receive income [<sup>F40</sup>that is not interest falling to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) as interest accruing, or (according to the authorised method of accounting used) becoming due and payable, in an accounting period ending after 31st March 1996],

the non-trading exchange gain or loss shall be treated as not accruing.

(8) In a case where—

- (a) a non-trading exchange gain or loss would (apart from this subsection) accrue to a company as regards a liability consisting of a duty to settle under a qualifying debt, and
- (b) a charge is allowed to the company in respect of the debt under section 338 of the Taxes Act 1988 (allowance of charges on income and capital) <sup>F41</sup> . . . ,

the non-trading exchange gain or loss shall be treated as not accruing.

[<sup>F42</sup>(8A) A charge shall be treated as allowed as mentioned in subsection (8) above if—

- (a) it would be so allowed if the company's total profits were sufficient,
- (b) it would be so allowed if the duty mentioned in that subsection were settled, and if in settling it payment were made out of the company's profits brought into charge to corporation tax, or
- (c) it would be so allowed if the facts were as mentioned in both paragraph (a) and paragraph (b) above.]

(9) Section 396 of the Taxes Act 1988 (Case VI losses) shall not be taken to apply to a loss which a company is treated as incurring by virtue of this section; and an amount which a company is treated as receiving by virtue of this section shall not be regarded, for the purposes of subsection (1) of section 396, as income arising as mentioned in that subsection.

#### Textual Amendments

**F37** Words in s. 129(2) substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 68(1)** (with ss. 80-105)

**F38** Words in s. 129(4) substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 68(2)** (with ss. 80-105)

**F39** S. 129(5)(6) repealed (29.4.1996 with effect in accordance with Chapter II of Part IV of the repealing Act) by 1996 c. 8, ss. 104, 205, **Sch. 14 para. 68(3), Sch. 41 Pt. V(3)** (with ss. 80-105)

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**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 1993, Part II. (See end of Document for details)

- F40** Words in s. 129(7)(b) substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 68(4)** (with ss. 80-105)
- F41** Words in s. 129(8)(b) repealed (retrospectively) by 1995 c. 4, ss. 130, 162, Sch. 24 Pt. I paras. 1, 3, **Sch. 29 Pt. VIII(17)**
- F42** S. 129(8A) inserted (retrospectively) by 1995 c. 4, s. 130, Sch. 24 Pt. I paras. 1, **3(3)**

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

- C18** S. 129 modified (23.3.1995) by S.I. 1994/3226, **reg. 15(5)**
- C19** S. 129 applied (23.3.1995) by S.I. 1994/3229, **reg. 3(2)(b)**

[<sup>F43</sup>**130 Non-trading gains and losses.**

- (1) Where a company is treated by virtue of section 129 above as receiving any amount in an accounting period, that amount shall be brought into account for that accounting period as if it were a non-trading credit falling for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) to be brought into account in respect of a loan relationship of the company.
- (2) Where a company is treated by virtue of section 129 above as incurring any loss in an accounting period, the amount of the loss shall be brought into account for that accounting period as if it were a non-trading debit falling for the purposes of Chapter II of Part IV of the Finance Act 1996 to be brought into account in respect of a loan relationship of the company.]

**Textual Amendments**

- F43** S. 130 substituted (29.4.1996) for ss. 130-133 by 1996 c. 8, s. 104, **Sch. 14 para. 69** (with ss. 80-105)

*Alternative calculation*

**134 Alternative calculation.**

Schedule 15 to this Act (which provides for the amount of an initial exchange gain or loss to be found in accordance with an alternative method of calculation in certain cases) shall have effect.

*Main benefit test*

**135 Loss disregarded if the main benefit.**

- (1) In a case where—
- (a) an exchange loss would (apart from this section) accrue to a company for an accrual period,
- (b) the loss would accrue as regards an asset or liability falling within section 153(1)(a) or (2)(a) below, [<sup>F47</sup>and]

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- (c) the nominal currency of the asset or liability is such that the main benefit or one of the main benefits that might be expected to arise from the company's holding the asset or owing the liability is the accrual of the loss,<sup>F48</sup> . . .

<sup>F48</sup>(d) . . . . .

the loss shall be treated as not accruing.

- (2) References in subsection (1) above to an exchange loss are to an exchange loss of a trade or an exchange loss of part of a trade or a non-trading exchange loss.

**Textual Amendments**

**F47** Word in s. 135(1)(b) inserted (31.7.1998 with effect in accordance with s. 109(4) of the amending Act) by 1998 c. 36, s. 109(2)(a)(4)(5)

**F48** S. 135(1)(d) and word “and” immediately preceding it repealed (31.7.1998 with effect in accordance with s. 109(4) of the amending Act) by 1998 c. 36, ss. 109(1)(a)(4)(5), 165, Sch. 27 Pt. III(26) Note

**[<sup>F49</sup>135A Sterling used if avoidance of gain is the main benefit.**

- (1) This section applies where, as regards qualifying assets and liabilities of a company—
- (a) a currency other than sterling would (apart from this section) be the local currency for the purposes of sections 125 to 129 above; and
  - (b) the main benefit that might be expected to accrue from that currency being the local currency is that no net exchange gain would accrue to the company for those purposes.
- (2) If a net exchange gain would accrue to the company if sterling were the local currency for the purposes of sections 125 to 129 above, then, as regards the assets and liabilities concerned, sterling shall be the local currency for those purposes.
- (3) For the purposes of this section a net exchange gain accrues to a company if its initial exchange gains (as determined in accordance with this Chapter) exceed its initial exchange losses (as so determined).]

**Textual Amendments**

**F49** S. 135A inserted (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, s. 106(7)

*Arm's length test*

**136 Arm's length test: assets and liabilities.**

- (1) Subject to the following provisions of this section, subsection (2) below applies where—
- (a) a qualifying company becomes entitled to a qualifying asset falling within section 153(1)(a) below or subject to a qualifying liability falling within section 153(2)(a) below,
  - (b) the transaction as a result of which the company becomes entitled or subject to the asset or liability would not have been entered into at all if the parties

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to the transaction had been dealing at arm's length, or the transaction's terms would have been different if they had been so dealing, [<sup>F50</sup>and]

(c) as regards the asset or liability an exchange loss accrues to the company for an accrual period (or would so accrue apart from this section), <sup>F51</sup> . . .

<sup>F51</sup>(d) . . . . .

and any reference in this section to an exchange loss is to an exchange loss of a trade or an exchange loss of part of a trade or a non-trading exchange loss.

(2) The exchange loss shall be treated as not accruing to the company for the accrual period.

(3) Where subsection (2) 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 of the loss 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).

(4) Subsection (5) below applies where 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 the amount of the debt would have been an amount (the adjusted amount) greater than nil but less than its actual amount.

(5) In such a case—

(a) subsection (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 been the adjusted amount;

<sup>F52</sup> . . .

(6) Where subsection (5)(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).

(7) Subsection (2) above shall not apply in a case where—

(a) the right constituting the asset mentioned in subsection (1) above arises under a loan made by the company,

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- (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 [<sup>F53</sup>falls to be treated in accordance with Schedule 28AA to] the Taxes Act 1988 (undervalue or overvalue) as if interest had been charged on it or, as the case may be, charged at a higher rate.

(8) Subsection (9) below applies where—

- (a) paragraphs (a) and (b) of subsection (7) 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 [<sup>F54</sup>falls to be treated in accordance with Schedule 28AA to] 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 (9) below the reference to the adjusted amount is to an amount equal to the part of the loan that has been so treated.

(9) In such a case—

- (a) subsection (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 loan had been the adjusted amount;

<sup>F55</sup> . . .

(10) Where subsection (9)(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).

(11) Subsections (2) to (10) above shall not apply where—

- (a) the transaction is entered into by the company mentioned in subsection (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 subsection (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,

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- (d) as regards that liability or asset an appropriate exchange gain accrues to company B for an accrual period coterminous with that mentioned in subsection (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.
- (12) For the purposes of subsection (11) 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 subsection (1) above is found;
  - (b) amount X is the amount of the exchange loss mentioned in subsection (1) above;
  - (c) amount Y is the amount of the exchange gain mentioned in subsection (11) (d) above, found without regard to section 139 below;
  - [<sup>F56</sup>(d) any question whether companies are members of the same group shall be determined in accordance with section 170 of the <sup>M42</sup>Taxation of Chargeable Gains Act 1992.]
- (13) Where the exchange loss mentioned in subsection (1) above represents the whole or part of an initial exchange loss accruing under section 127 above, this section shall have effect as if subsections (4) to (12) were omitted.
- (14) Regulations may make provision designed to supplement this section in its application to a case where the exchange loss mentioned in subsection (1) above represents the whole or part of an initial exchange loss accruing under section 127 above; and the regulations may in particular contain provision based on subsections (4) to (12) above but differing from those subsections to such extent as the Treasury think fit.
- (15) In applying subsections (1)(b), (4) and (7)(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.

#### Textual Amendments

- F50** Word in s. 136(1)(b) inserted (31.7.1998) by 1998 c. 36, s. 109(2)(b)(4)(5)
- F51** S. 136(1)(d) and word “and” immediately preceding it repealed (31.7.1998 with effect in accordance with s. 109(4) of the repealing Act) by 1998 c. 36, ss. 109(1)(b)(i)(4)(5), 165, Sch. 27 Pt. III(26) Note
- F52** Words in s. 136(5) repealed (31.7.1998 with effect in accordance with s. 109(4) of the repealing Act) by 1998 c. 36, ss. 109(1)(b)(ii)(4)(5), 165, Sch. 27 Pt. III(26) Note
- F53** Words in s. 136(7) substituted (31.7.1998) by 1998 c. 36, s. 108(3)(a)(5)(6)
- F54** Words in s. 136(8) substituted (31.7.1998) 1998 c. 36, s. 108(3)(a)(5)(6)
- F55** Words in s. 136(9) repealed (31.7.1998 with effect in accordance with s. 109(4) of the repealing Act) by 1998 c. 36, ss. 109(1)(b)(ii)(4)(5), 165, Sch. 27 Pt. III(26) Note
- F56** S. 136(12)(d) substituted (28.7.2000 with effect as mentioned in Sch. 29 para 41(2) of the amending Act) by 2000 c. 17, s. 102, Sch. 29 Pt II para. 41(1)

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

**C24** S. 136 modified (23.3.1995) by S.I. 1994/3226, reg. 2(2)

**C25** S. 136(11) modified (23.3.1995) by S.I. 1994/3227, reg. 12(1)

**Marginal Citations**

**M42** 1992 c. 12.

[<sup>F57</sup> **136A Arm's length test: debts of varying amounts.**

- (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
  - (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;
- (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 [<sup>F59</sup> falls to be treated in accordance with

<sup>F58</sup> . . .



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Schedule 28AA to] 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 [<sup>F60</sup> falls in relation to any time in that accrual period to be treated in accordance with Schedule 28AA to] 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);

<sup>F61</sup> . . . .

(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,

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- (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
  - <sup>F62</sup>(d) [ any question whether companies are members of the same group shall be determined in accordance with section 170 of the Taxation of Chargeable Gains Act 1992.]
- (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.]

#### Textual Amendments

- F57** S. 136A inserted (23.3.1995) by S.I. 1994/3232, **reg. 2**
- F58** Words in s. 136A(3)(b) repealed (31.7.1998 with effect in accordance with s. 109(4) of the amending Act) by 1998 c. 36, ss. 109(1)(c)(4)(5), 165, **Sch. 27 Pt. III(26)**, Note
- F59** Words in s. 136A(5) substituted (31.7.1998 with effect in accordance with s. 108(5) of the amending Act) by 1998 c. 36, **s. 108(3)(a)(5)**
- F60** Words in s. 136A(6) substituted (31.7.1998 with effect in accordance with s. 108(5) of the amending Act) by 1998 c. 36, **s. 108(3)(b)(5)**
- F61** Words in s. 136A(7)(b) repealed (31.7.1998 with effect in accordance with s. 109(4) of the amending Act) by 1998 c. 36, ss. 109(1)(c)(4)(5), 165, **Sch. 27 Pt. III(26)**, Note
- F62** S. 136A(10)(d) substituted (28.7.2000 with effect as mentioned in **Sch. 29 para. 42(2)** of the amending Act) by 2000 c. 17, s. 102, **Sch. 29 para. 42(1)**

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

- C26** S. 136A(9) modified (23.3.1995) by S.I. 1994/3227, **reg. 12(2)**

### 137 Arm's length test: currency contracts.

- (1) Subsection (2) below applies where—
- (a) a qualifying company enters into a currency contract,
  - (b) the contract would not have been entered into at all if the parties to it had been dealing at arm's length, or the contract's terms would have been different if they had been so dealing, [<sup>F63</sup>and]
  - (c) as regards the contract an exchange loss accrues to the company for an accrual period (or would so accrue apart from this section), <sup>F64</sup> . . .
  - <sup>F64</sup>(d) . . . . .

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and any reference in this section to an exchange loss is to an exchange loss of a trade or an exchange loss of part of a trade or a non-trading exchange loss.

- (2) The exchange loss shall be treated as not accruing to the company for the accrual period.
- (3) Where subsection (2) above applies and the accrual period is not the last to occur as regards the contract while it is held by the company—
  - (a) an amount equal to the amount of the loss shall be set off against appropriate exchange gains accruing to the company as regards the contract 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).

- (4) In applying subsection (1)(b) above all factors shall be taken into account including any currency that would have been involved and any amounts that would have been involved.

#### Textual Amendments

- F63** Word in s. 137(1)(b) inserted (31.7.1998 with effect in accordance with s. 109(4)(5) of the amending Act) by 1998 c. 36, s. 109(2)(c)(4)(5)
- F64** S. 137(1)(d) and word “and” immediately preceding it repealed (31.7.1998 with effect in accordance with s. 109(4) of the amending Act) by 1998 c. 36, ss. 109(1)(d)(4)(5), 165, Sch. 27 Pt. III(26) Note

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

- C27** S. 137 modified (23.3.1995) by S.I. 1994/3226, reg. 2(2)

### 138 Arm’s length test: non-sterling trades.

- (1) Subsection (2) below applies where—
  - (a) an exchange gain of a trade, or of part of a trade, accruing to a company for an accrual period falls to be reduced by virtue of section 136(3), (6) or (10) or 137(3) above, and
  - (b) the amount falling to be set off is expressed in a currency (the first currency) different from the currency in which the gain is expressed (the second currency).
- (2) For the purposes of section 136(3), (6) or (10) or 137(3) the amount falling to be set off shall be treated as the equivalent, expressed in the second currency, of the amount expressed in the first currency.
- (3) The translation required by subsection (2) above shall be made by reference to the London closing exchange rate for the two currencies concerned for the first day of the accounting period which constitutes the relevant accrual period or in which that accrual period falls; and the relevant accrual period is the accrual period mentioned in subsection (1)(a) above.

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- (4) Subsection (2) above shall have effect subject to the application for succeeding accrual periods of this section as regards an amount falling to be set off.
- (5) References in subsections (1) and (2) above to the amount falling to be set off include references to so much of that amount as remains after any application of section 136(3), (6) or (10) or 137(3) for earlier accrual periods.

### *Deferral of unrealised gains*

#### **139 Claim to defer unrealised gains.**

- (1) This section applies where (apart from a claim under this section as regards an accounting period) an unrealised exchange gain would accrue to a company—
  - (a) for an accrual period constituting or falling within the accounting period, and
  - (b) as regards a long-term capital asset or a long-term capital liability;
and the reference here to an exchange gain is to an exchange gain of a trade or an exchange gain of part of a trade or a non-trading exchange gain.
- (2) This section does not apply unless an amount is available for relief under this section for the accounting period.
- (3) The company may claim that—
  - (a) the gain, or part of it, shall be treated in accordance with section 140(3) below, and
  - (b) an amount shall be treated in accordance with section 140(4) to (10) below as regards the asset or liability.
- (4) The claim must—
  - (a) stipulate the amount of the gain or part to be treated as mentioned in subsection (3)(a) above;
  - (b) stipulate the amount to be treated as mentioned in subsection (3)(b) above;
  - (c) identify the asset or liability concerned.
- (5) The following rules apply to a claim—
  - (a) only one claim may be made as regards an accounting period, but where this section applies in relation to two or more gains which would accrue to a company for an accrual period or accrual periods constituting or falling within the accounting period the claim may be made in relation to more than one of the gains;
  - (b) the amount stipulated under subsection (4)(b) above as regards an asset or liability must be the same as, and must be expressed in the same currency as, the amount of the gain or part stipulated under subsection (4)(a) above as regards the asset or liability;
  - (c) the amount (or total of the amounts) stipulated under subsection (4)(a) above as regards an accounting period must not exceed the amount available for relief under this section for the accounting period.
- (6) A claim may not be made or withdrawn as regards an accounting period if—
  - (a) the company has been assessed to corporation tax for the period, and
  - (b) the assessment has become final and conclusive;

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but the preceding provisions of this subsection do not apply if the claim or withdrawal is made before the expiry of the period of two years beginning with the end of the accounting period.

- (7) In a case where—
- (a) the period of six years beginning with the end of an accounting period expires, and
  - (b) no assessment of the company to corporation tax for the accounting period has become final and conclusive,
- a claim may not be made or withdrawn as regards that accounting period.
- (8) In a case where—
- (a) subsection (6) or (7) above would otherwise prevent a claim being made in a particular case, and
  - (b) the Board make a determination under this subsection,
- a claim may be made on or before such day as the Board allow.

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

- C28** S. 139 modified (23.3.1995) by S.I. 1994/3226, reg. 2(2)  
S. 139 modified (23.3.1995) by S.I. 1994/3228, regs. 2(2)(6), 4(2)  
S. 139 modified (1.1.1999) by S.I. 1998/3177, reg. 7

**140 Deferral of unrealised gains.**

- (1) This section applies where a claim is made under section 139 above as regards an asset or liability.
- (2) For the purposes of this section—
- (a) the first accrual period is the accrual period mentioned in section 139(1) above, and
  - (b) the second accrual period is the accrual period next occurring as regards the asset or liability while it is held or owed by the company.
- (3) Any gain or part whose amount is stipulated under section 139(4)(a) above as regards the asset or liability shall be treated as not accruing as regards the asset or liability for the first accrual period.
- (4) If throughout the second accrual period the asset is held, or the liability is owed, by the company solely for the purposes of a trade or part of a trade—
- (a) an exchange gain of the trade or part for the accrual period shall be treated as accruing to the company as regards the asset or liability,
  - (b) the amount of the gain shall be the amount stipulated under section 139(4)(b) above as regards the asset or liability, and
  - (c) section 128(4) above shall apply.
- (5) If throughout the second accrual period the asset is held, or the liability is owed, by the company solely for purposes other than trading purposes—
- (a) a non-trading exchange gain for the accrual period shall be treated as accruing to the company as regards the asset or liability,

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- (b) the amount of the gain shall be the amount stipulated under section 139(4)(b) above as regards the asset or liability, and
  - (c) section 129(2) above shall apply.
- (6) Where as regards the second accrual period neither subsection (4) nor subsection (5) above applies—
- (a) the amount stipulated under section 139(4)(b) above as regards the asset or liability shall be apportioned for the period on a just and reasonable basis, and
  - (b) subsections (7) and (8) below shall apply.
- (7) Where for the second accrual period part of an amount is attributed to a trade or part of a trade under subsection (6) above—
- (a) an exchange gain of the trade or part for the accrual period shall be treated as accruing to the company as regards the asset or liability,
  - (b) the amount of the gain shall be the amount of the part so attributed, and
  - (c) section 128(4) above shall apply.
- (8) Where for the second accrual period part of an amount is attributed to purposes other than trading purposes under subsection (6) above—
- (a) a non-trading exchange gain for the accrual period shall be treated as accruing to the company as regards the asset or liability,
  - (b) the amount of the gain shall be the amount of the part so attributed, and
  - (c) section 129(2) above shall apply.
- (9) In a case where—
- (a) an exchange gain of a trade or of part of a trade for the second accrual period is treated as accruing to a company by virtue of the preceding provisions of this section (or would be so treated apart from this subsection), and
  - (b) in that period the asset or liability is to any extent held or owed by the company in exempt circumstances,
- to that extent the gain shall be treated as a non-trading exchange gain (and not as a gain of the trade or part) and section 129(2) above shall apply.
- (10) Any apportionment required by subsection (9) above shall be made on a just and reasonable basis.
- (11) Subsections (4) to (10) above shall have effect subject to any further application of section 139 above as regards the asset or liability.
- [<sup>F65</sup>(12) For the purposes of this section a part of a trade is any part of a trade which is treated for the purposes of section 93 above as if it were a separate business for the relevant accounting period; and the relevant accounting period is the accounting period which constitutes the second accrual period or in which that accrual period falls.]

#### Textual Amendments

**F65** S. 140(12) substituted (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, s. 106(8)

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

**C29** S. 140 modified (23.3.1995) by S.I. 1994/3226, reg. 2(2)  
 S. 140 modified (1.1.1999) by S.I. 1998/3177, reg. 7

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**Status:** Point in time view as at 28/07/2000. This version of this part contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 1993, Part II. (See end of Document for details)

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S. 140 modified (23.3.1995) by S.I. 1994/3228, **reg. 2(2)(6)**

#### **141 Deferral: amount available for relief.**

- (1) An amount is available for relief under section 139 above for an accounting period if amount A is exceeded by amount B or (if amount C is lower than amount B) amount A is exceeded by amount C; and the amount available for relief for the period is the amount of the difference between amount A and amount B or (as the case may be) between amount A and amount C.
- (2) Amount A is one tenth of the amount falling within subsection (3) below.
- (3) The amount falling within this subsection is an amount equal to the amount of the company's profits for the accounting period on which corporation tax would fall finally to be borne apart from—
  - (a) a claim under section 139 above as regards the accounting period, and
  - (b) section 402 of the Taxes Act 1988 (group relief);and section 238(4) of the Taxes Act 1988 (amount of profits on which corporation tax falls finally to be borne) shall apply for the purposes of this subsection.
- (4) Amount B is the amount found by deducting amount B(2) from amount B(1) where—
  - (a) amount B(1) is the total amount of unrealised exchange gains which accrue or would (apart from a claim under section 139 above as regards the accounting period) accrue to the company, in an accrual period or accrual periods constituting or falling within the accounting period, as regards long-term capital assets or long-term capital liabilities or both;
  - (b) amount B(2) is the total amount of unrealised exchange losses accruing to the company in such an accrual period or accrual periods as regards such assets or liabilities or both.
- (5) Amount C is the amount found by deducting amount C(2) from amount C(1) where—
  - (a) amount C(1) is the total amount of exchange gains which accrue or would (apart from a claim under section 139 above as regards the accounting period) accrue to the company, in an accrual period or accrual periods falling within the accounting period, as regards relevant items;
  - (b) amount C(2) is the total amount of exchange losses accruing to the company in such an accrual period or periods as regards relevant items.
- (6) In subsections (4) and (5) above the references to exchange gains and losses are to exchange gains and losses of a trade and exchange gains and losses of part of a trade and non-trading exchange gains and losses.
- (7) For the purposes of subsection (5) above relevant items are—
  - (a) assets falling within section 153(1)(a) below;
  - (b) liabilities falling within section 153(2)(a) below;
  - (c) currency contracts.

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

- C30** S. 141 modified (23.3.1995) by S.I. 1994/3226, **reg. 2(2)**  
S. 141 modified (23.3.1995) by S.I. 1994/3228, **regs. 2(2)(6), 4(3)-(8)**



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S. 141 modified (1.1.1999) by S.I. 1998/3177, reg. 7

## 142 Deferral: non-sterling trades.

(1) Where apart from this subsection—

- (a) a gain falling within section 139(1) above would be expressed in a currency other than sterling, or
- (b) a gain or loss falling within section 141(4) or (5) above would be expressed in a currency other than sterling,

the amount of the gain or loss shall be treated for the purposes of sections 139 to 141 above as the sterling equivalent of its amount expressed in the other currency.

[<sup>F66</sup>(2) For the purposes of subsection (1) above the sterling equivalent of an amount is the sterling equivalent calculated by reference to such rate of exchange as applies by virtue of section 94 above in the case of the profits or losses for the accounting period concerned of the business or part of which the gain or loss is a gain or loss (or would be apart from section 139 above).]

(3) Subsection (4) below applies where—

- (a) part of an exchange gain of a [<sup>F67</sup>business], or part of an exchange gain of part of a [<sup>F67</sup>business], is treated as not accruing to a company for an accrual period by virtue of section 140(3) above, and
- (b) the local currency of the [<sup>F67</sup>business] or part for the accounting period which constitutes the accrual period or in which it falls is a currency other than sterling.

[<sup>F68</sup>(4) The amount the company is treated as receiving under section 128(4) or 129(2) above in respect of the accounting period and by virtue of the gain (as reduced) shall be the amount computed and expressed in that currency.]

(5) In a case where—

- (a) an exchange gain of a [<sup>F67</sup>business], or of part of a [<sup>F67</sup>business], for an accrual period is treated as accruing to a company under section 140 above, and
- (b) the local currency of the [<sup>F67</sup>business] or part for the accounting period which constitutes the accrual period or in which it falls is a currency other than sterling,

the amount of the gain shall be treated as the local currency equivalent of its amount expressed in sterling.

(6) The translation required by subsection (5) above shall be made by reference to the London closing exchange rate for the two currencies concerned—

- (a) for the last day of the accrual period mentioned in subsection (5) above, or
- (b) if that accrual period does not end with the end of a day, for the day on which that accrual period ends.

### Textual Amendments

**F66** S. 142(2) substituted (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, s. 106(9)

**F67** Word in s. 142(3)(5) substituted (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, s. 106(10)



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**F68** S. 142(4) substituted (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, s. 106(11)

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

**C31** S. 142 modified (1.1.1999) by S.I. 1998/3177, reg. 7

S. 142 modified (23.3.1995) by S.I. 1994/3228, reg. 2(2)(6)

**C32** S. 142(1)-(4) excluded (1.5.1995) by 1988 c. 1, Sch. 24 para. 15 (as inserted (1.5.1995) by 1995 c. 4, s. 133, Sch. 25 paras. 1, 6(5))

**F69** **143 Deferral: supplementary.**

- (1) For the purposes of sections 139 and 141 above and this section an exchange gain or loss is unrealised if the accrual period concerned is one which ends solely by virtue of an accounting period of the company coming to an end.
- (2) In a case where—
  - (a) an unrealised exchange gain would accrue as mentioned in section 139(1) above,
  - (b) the gain represents the whole or part of an initial exchange gain accruing under section 127 above, and
  - (c) the whole or part of the unrealised exchange gain is attributable to any part by which the nominal amount of the debt has decreased,the company may not claim under section 139 above as regards so much of the unrealised exchange gain as is so attributable.
- (3) In applying subsection (2)(c) above the gain shall be apportioned on a just and reasonable basis.
- (4) For the purposes of sections 139 and 141 above an asset or liability is a long-term capital asset or liability if the following conditions are fulfilled—
  - (a) the asset or liability falls within section 153(1)(a) or (2)(a) below,
  - (b) the debt under which it subsists is such that, under the terms as originally entered into, the time for settlement is not less than one year from the time when the debt was created, and
  - (c) the asset or liability represents capital throughout the accounting period mentioned in section 139(1) above;and the time for settlement is the earliest time at which the creditor can require settlement if he exercises all available options and rights.
- (5) For the purposes of section 140 above an asset is held, or a liability is owed, in exempt circumstances at a given time if it is then held or owed—
  - (a) for the purposes of long term insurance business;
  - (b) for the purposes of mutual insurance business;
  - (c) for the purposes of the occupation of commercial woodlands;
  - (d) by a housing association approved at that time for the purposes of section 488 of the Taxes Act 1988;
  - (e) by a self-build society approved at that time for the purposes of section 489 of that Act.
- (6) In subsection (5) above—

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“long term insurance business” means insurance business of any of the classes specified in Schedule 1 to the <sup>M43</sup>Insurance Companies Act 1982;

“commercial woodlands” means woodlands in the United Kingdom which are managed on a commercial basis and with a view to the realisation of profits.

(7) Regulations may—

- (a) make provision modifying the effect of sections 139 to 142 above and the preceding provisions of this section in a case where the debt under which a long-term capital asset or liability subsists is settled and replaced to any extent by another debt under which (or other debts under each of which) such an asset or liability subsists;
- (b) make provision modifying the effect of sections 139 to 142 above and the preceding provisions of this section in a case where a group of companies is involved;
- (c) provide that the amount falling within section 141(3) above shall be treated as reduced in accordance with prescribed rules;

and any provision under paragraph (a) above may include provision that realised gains or losses are to be treated as wholly or partly unrealised.

#### Textual Amendments

- F69** S. 143(1)-(6) modified (1.1.1999) by 1998/3177, reg. 7  
 S. 143(1)-(6) modified (23.3.1995) by S.I. 1994/3228, reg. 2(2)(6)

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

- C33** S. 143(2) excluded (23.3.1995) by S.I. 1994/3228, reg. 2(2)(c)(6)(b)(ii)

#### Marginal Citations

- M43** 1982 c. 50.

### *Irrecoverable debts*

#### 144 Irrecoverable debts.

(1) In a case where—

- (a) a qualifying company holds an asset consisting of a right to settlement under a qualifying debt or owes a liability consisting of a duty to settle under such a debt, and
- (b) <sup>F70</sup> . . . as regards any accounting period of the company, <sup>F70</sup> . . . all of the debt outstanding immediately before the end of the period could at that time reasonably have been regarded as irrecoverable,

the company shall be treated for the purposes of this Chapter as if immediately before the end of that accounting period it ceased to be entitled to the asset or subject to the liability.

(2) Subsection (3) below applies in a case where—

- (a) paragraph (a) of subsection (1) above applies, and

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- (b) <sup>F71</sup> . . . as regards any accounting period of the company, <sup>F71</sup> . . . part of the debt outstanding immediately before the end of the period could at that time reasonably have been regarded as irrecoverable.
- (3) The company shall be treated for the purposes of this Chapter as if—
  - (a) immediately after the beginning of the accounting period next following the accounting period mentioned in subsection (2) above there were a decrease in the nominal amount of the debt outstanding, and
  - (b) the decrease were of an amount equal to so much of the debt, expressed in its settlement currency, as was outstanding immediately before the end of the accounting period mentioned in subsection (2) above and <sup>F72</sup> . . . could at that time reasonably have been regarded as irrecoverable.

<sup>F73</sup>(4) . . . . .

**Textual Amendments**

- F70** Words in s. 144(1)(b) repealed (29.4.1996 with effect in accordance with s. 134 and Sch. 20 of the repealing Act) by 1996 c. 8, ss. 134, 205, Sch. 20 para. 68(1), **Sch. 41 Pt. V(10)**
- F71** Words in s. 144(2)(b) repealed (29.4.1996 with effect in accordance with s. 134 and Sch. 20 of the repealing Act) by 1996 c. 8, ss. 134, 205, Sch. 20 para. 68(1), **Sch. 41 Pt. V(10)**
- F72** Words in s. 144(3)(b) repealed (29.4.1996 with effect in accordance with s. 134 and Sch. 20 of the repealing Act) by 1996 c. 8, ss. 134, 205, Sch. 20 para. 68(1), **Sch. 41 Pt. V(10)**
- F73** S. 144(4) repealed (29.4.1996 with effect in accordance with s. 134 and Sch. 20 of the repealing Act) by 1996 c. 8, ss. 134, 205, Sch. 20 para. 68(1), **Sch. 41 Pt. V(10)**

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

- C34** S. 144(1) modified (23.3.1995) by S.I. 1994/3226, **reg. 4(1)** (subject to **reg. 4(2)**)

**145 Irrecoverable debts that become recoverable.**

- (1) Subsection (2) below applies where—
  - (a) a company has been treated as mentioned in section 144(1) above as regards a debt,
  - (b) at a time (the later time) falling after the end of the accounting period mentioned in section 144(1)(b) above all or part of the debt is actually outstanding, and
  - (c) <sup>F74</sup> . . . all or part of the amount actually outstanding at the later time could at that time reasonably have been regarded as recoverable.
- (2) The company shall be treated for the purposes of this Chapter as if—
  - (a) immediately after the later time it had become entitled to an asset consisting of a right to settlement under the debt or (as the case may be) subject to a liability consisting of a duty to settle under the debt, and
  - (b) the nominal amount of the debt outstanding, at the time the company became entitled or subject to the asset or liability, were an amount equal to so much of the debt, expressed in its settlement currency, as was actually outstanding at the later time and <sup>F75</sup> . . . could at that time reasonably have been regarded as recoverable.
- (3) Subsections (4) and (5) below apply where—

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- (a) a company has been treated as mentioned in section 144(3) above as regards a debt, or
  - (b) a company has been treated as mentioned in subsection (2) above as regards a debt by virtue of the fact that <sup>F76</sup> . . . part of the debt could, at the later time, reasonably have been regarded as recoverable.
- (4) In a case where—
- (a) at a time (the relevant time) falling after the end of the accounting period mentioned in section 144(2)(b) above or (as the case may be) falling after the later time all or part of the debt is actually outstanding,
  - (b) <sup>F77</sup> . . . all or part of the amount actually outstanding at the relevant time could at that time reasonably have been regarded as recoverable, and
  - (c) the recoverable amount exceeds the amount which (taking into account section 144(3) above, subsection (2) above and any previous application of this subsection) is the nominal amount of the debt outstanding at the relevant time,
- the company shall be treated for the purposes of this Chapter as if, immediately after the relevant time, there were an increase in the nominal amount of the debt outstanding and the increase were of an amount equal to the excess mentioned in paragraph (c) above.
- (5) For the purposes of subsection (4) above the recoverable amount is an amount equal to so much of the debt, expressed in its settlement currency, as was actually outstanding at the relevant time and <sup>F78</sup> . . . could at that time reasonably have been regarded as recoverable.
- <sup>F79</sup>(6) . . . . .

#### Textual Amendments

- F74** Words in s. 145(1)(c) repealed (29.4.1996 with effect in accordance with s. 134 and Sch. 20 of the repealing Act) by 1996 c. 8, ss. 134, 205, Sch. 20 para. 68(1), Sch. 41 Pt. V(10)
- F75** Words in s. 145(2)(b) repealed (29.4.1996 with effect in accordance with s. 134 and Sch. 20 of the repealing Act) by 1996 c. 8, ss. 134, 205, Sch. 20 para. 68(1), Sch. 41 Pt. V(10)
- F76** Words in s. 145(3)(b) repealed (29.4.1996 with effect in accordance with s. 134 and Sch. 20 of the repealing Act) by 1996 c. 8, ss. 134, 205, Sch. 20 para. 68(1), Sch. 41 Pt. V(10)
- F77** Words in s. 145(4)(b) repealed (29.4.1996 with effect in accordance with s. 134 and Sch. 20 of the repealing Act) by 1996 c. 8, ss. 134, 205, Sch. 20 para. 68(1), Sch. 41 Pt. V(10)
- F78** Words in s. 145(5) repealed (29.4.1996 with effect in accordance with s. 134 and Sch. 20 of the repealing Act) by 1996 c. 8, ss. 134, 205, Sch. 20 para. 68(1), Sch. 41 Pt. V(10)
- F79** Words in s. 145(6) repealed (29.4.1996 with effect in accordance with s. 134 and Sch. 20 of the repealing Act) by 1996 c. 8, ss. 134, 205, Sch. 20 para. 68(1), Sch. 41 Pt. V(10)

#### *Currency contracts: special cases*

### 146 Early termination of currency contract.

- (1) This section applies where—
- (a) a qualifying company ceases to be entitled to rights and subject to duties under a currency contract, and

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- (b) at the time it so ceases it has neither received nor made payment of any currency in pursuance of the contract.

[<sup>F80</sup>(1A) This section also applies where—

- (a) a qualifying company ceases to be entitled to rights and subject to duties under a currency contract, and
  - (b) it so ceases by virtue of the making of a payment to or by the company of an amount (in whatever currency) designed to represent any difference in value at the specified time between the two payments referred to in section 126(1) above.]
- (2) If the company has a net contractual gain of a trade it shall be treated for the purposes of the Tax Acts as—
    - (a) incurring in the trade a loss of an amount equal to that gain, and
    - (b) incurring the loss in respect of the last relevant accounting period.
  - (3) If the company has a net contractual loss of a trade it shall be treated for the purposes of the Tax Acts as—
    - (a) receiving in respect of the trade an amount equal to that loss, and
    - (b) receiving the amount in respect of the last relevant accounting period.
  - (4) If the company has a net contractual non-trading gain—
    - (a) it shall be treated as incurring by virtue of section 129 above a loss of an amount equal to the amount of that gain,
    - (b) it shall be treated as incurring the loss in the last relevant accounting period, and
    - (c) in relation to that accounting period references to amount B shall be construed accordingly.
  - (5) If the company has a net contractual non-trading loss—
    - (a) it shall be treated as receiving by virtue of section 129 above an amount equal to the amount of that loss,
    - (b) it shall be treated as receiving the amount in the last relevant accounting period, and
    - (c) in relation to that accounting period references to amount A shall be construed accordingly.
  - (6) For the purposes of this section—
    - (a) the termination time is the time mentioned in subsection (1)(b) above;
    - (b) the last relevant accounting period is the company's accounting period in which the termination time falls;
    - (c) the relevant accounting periods are that accounting period and the company's accounting periods preceding it.
  - (7) This is how to find out whether the company has a net contractual gain or loss of a trade and (if it has) its amount—
    - (a) take the aggregate of the amounts (if any) the company is treated as receiving under section 128(4) above in respect of the trade and the contract and the relevant accounting periods;
    - (b) take the aggregate of the amounts (if any) of the losses the company is treated as incurring under section 128(8) above in the trade and in respect of the contract and the relevant accounting periods;

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- (c) if the amount found under paragraph (a) above exceeds that found under paragraph (b) above the company has a net contractual gain of the trade of an amount equal to the excess;
  - (d) if the amount found under paragraph (b) above exceeds that found under paragraph (a) above the company has a net contractual loss of the trade of an amount equal to the excess;
- and in applying paragraphs (a) and (b) above ignore the effect of subsections (2) and (3) above.
- (8) This is how to find out whether the company has a net contractual non-trading gain or loss and (if it has) its amount—
- (a) take the aggregate of the amounts (if any) the company is treated as receiving under section 129(2) above in respect of the contract in the relevant accounting periods;
  - (b) take the aggregate of the amounts (if any) of the losses the company is treated as incurring under section 129(4) above in respect of the contract in the relevant accounting periods;
  - (c) if the amount found under paragraph (a) above exceeds that found under paragraph (b) above the company has a net contractual non-trading gain of an amount equal to the excess;
  - (d) if the amount found under paragraph (b) above exceeds that found under paragraph (a) above the company has a net contractual non-trading loss of an amount equal to the excess;
- and in applying paragraphs (a) and (b) above ignore the effect of subsections (4) and (5) above.
- (9) For the purposes of subsection (7) above—
- (a) an amount the company is treated as receiving under section 128(4) above in respect of part of the trade concerned shall be treated as received in respect of the trade;
  - (b) a loss the company is treated as incurring under section 128(8) above in part of the trade shall be treated as incurred in the trade.
- (10) Where any amount or loss the company is treated as receiving or incurring as mentioned in subsection (7)(a) or (b) above would (apart from this subsection) be expressed in a currency other than the local currency of the trade for the last relevant accounting period, it shall be treated for the purposes of this section as being the local currency equivalent of the amount or loss expressed in that other currency.
- (11) For the purposes of subsection (10) above the local currency equivalent of an amount is the equivalent—
- (a) expressed in the local currency of the trade for the last relevant accounting period, and
  - (b) calculated by reference to the London closing exchange rate for the day in which the termination time falls.
- (12) Subsection (13) below applies where the company has (apart from that subsection) a net contractual gain or loss of a trade and—
- (a) the trade concerned has ceased before the termination time, or
  - (b) the company carries on exempt activities immediately before the termination time.

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- (13) In such a case the company shall be treated for the purposes of this section as if—
- (a) it did not have the net contractual gain or loss of the trade, and
  - (b) it had a net contractual non-trading gain or loss (as the case may be) equal to the amount which would have been the amount of the net contractual gain or loss of the trade apart from paragraph (a) above.
- (14) Where any amount found under subsection (13)(b) above would (apart from this subsection) be expressed in a currency other than sterling, it shall be treated for the purposes of this section as being the sterling equivalent of the amount expressed in that other currency; and any translation required by this subsection shall be made by reference to the London closing exchange rate for the currencies concerned for the day in which the termination time falls.
- (15) For the purposes of this section a company carries on exempt activities at a given time if—
- (a) the activities it then carries on are or include any of the activities mentioned in subsection (16) below,
  - (b) it is a housing association approved at that time for the purposes of section 488 of the Taxes Act 1988, or
  - (c) it is a self-build society approved at that time for the purposes of section 489 of that Act.
- (16) The activities referred to in subsection (15)(a) above are—
- (a) the activity of long term insurance business;
  - (b) the activity of mutual insurance business;
  - (c) the activity of the occupation of commercial woodlands;
- and section 143(6) above applies for the purposes of this subsection.

#### Textual Amendments

**F80** S. 146(1A) inserted (3.5.1994) by 1994 c. 9, s. 115(2)

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

**C35** S. 146 modified (9.1.2001) by S.I. 2000/3315, reg. 11

**C36** S. 146(10)(11)(14) excluded (1.5.1995) by 1988 c. 1, Sch. 24 para. 16 (as inserted (1.5.1995) by 1995 c. 4, s. 133, Sch. 25 paras. 1, 6(5))

### 147 Reciprocal currency contracts.

- (1) This section applies where—
- (a) a qualifying company enters into a currency contract (the first contract), and
  - (b) the company closes out that contract by entering into another currency contract (the second contract) with rights and duties which are reciprocal to those under the first contract.
- (2) For the purposes of this Chapter the company shall be treated as ceasing, at the time it enters into the second contract, to be entitled to rights and subject to duties under the first contract without having received or made payment of any currency in pursuance of the first contract.

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- (3) For the purposes of this Chapter the second contract shall be ignored (except in applying the preceding provisions of this section).

*Excess gains or losses*

**148 Excess gains or losses.**

- (1) Regulations may provide that where prescribed conditions are fulfilled as regards an asset or liability relief from tax shall be afforded in respect of it; and subsections (2) to (4) below shall apply for the purposes of the regulations.
- (2) The prescribed conditions must be or include ones that are met where it can reasonably be said that—
  - (a) a loss other than an exchange loss has accrued to a qualifying company as regards the asset or liability and no relief from tax is available under the Tax Acts in respect of the loss, and
  - (b) exchange gains have accrued to the company as regards the asset or liability without being matched (or fully matched) by exchange losses accruing to the company as regards the asset or liability.
- (3) The relief shall take such form as is prescribed and shall be such that the amount relieved does not exceed the amount of the unmatched gains.
- (4) The regulations may provide that if the loss mentioned in subsection (2)(a) above is made good to any extent the relief afforded by the regulations shall be cancelled (to the extent prescribed) by an assessment to tax.
- (5) Regulations may provide that where prescribed conditions are fulfilled as regards an asset or liability a charge to tax shall be imposed in respect of it; and subsections (6) and (7) below shall apply for the purposes of the regulations.
- (6) The prescribed conditions must be or include ones that are met where it can reasonably be said that—
  - (a) a gain other than an exchange gain has accrued to a qualifying company as regards the asset or liability and no charge to tax is imposed under the Tax Acts in respect of the gain, and
  - (b) exchange losses have accrued to the company as regards the asset or liability without being matched (or fully matched) by exchange gains accruing to the company as regards the asset or liability.
- (7) The charge shall take such form as is prescribed and shall be such that the amount charged does not exceed the amount of the unmatched losses.
- (8) Regulations under this section may include provision that the relief—
  - (a) is subject to a claim being made;
  - (b) is not available in prescribed circumstances.
- (9) Where (apart from this subsection) an exchange gain or loss would be expressed in a currency other than sterling, the amount of the gain or loss shall be treated for the purposes of this section as the sterling equivalent of its amount expressed in the other currency.



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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1993, Part II. (See end of Document for details)*

- (10) The translation required by subsection (9) above shall be made by reference to the London closing exchange rate for the two currencies concerned—
- (a) for the last day of the accrual period for which the gain or loss accrues, or
  - (b) if that accrual period does not end with the end of a day, for the day on which that accrual period ends.
- (11) In this section—
- (a) references to an exchange gain are to an exchange gain of a trade or an exchange gain of part of a trade or a non-trading exchange gain;
  - (b) references to an exchange loss are to an exchange loss of a trade or an exchange loss of part of a trade or a non-trading exchange loss.

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

C37 S. 148(9) modified (1.5.1995) by 1988 c. 1, Sch. 24 para. 17 (as inserted (1.5.1995) by 1995 c. 4, s. 133, Sch. 25 paras. 1, 6(5))

*Local currency to be used*

**149 Local currency to be used.**

- (1) Subject to the following provisions of this section, the local currency for the purposes of sections 125 to 127 above is sterling.
- (2) Subsections (4) to (6) below apply where—
- (a) at any time in an accrual period an asset or contract was held, or a liability was owed, by a qualifying company for the purposes of a [<sup>F81</sup>business or businesses] carried on by it or of part or parts of a [<sup>F81</sup>business or businesses] carried on by it, and
  - (b) the local currency of [<sup>F81</sup>any such business] or part for the relevant accounting period is a currency other than sterling.
- (3) References in this section to the relevant accounting period are to the accounting period which constitutes the accrual period or in which the accrual period falls.
- (4) If throughout the accrual period <sup>F82</sup>. . . only one local currency is involved, [<sup>F83</sup>sections 125 to 129] above shall be applied by reference to that currency.
- (5) If throughout the accrual period <sup>F84</sup>. . . more than one local currency is involved, [<sup>F83</sup>sections 125 to 129] above shall be applied separately by reference to each local currency involved and any exchange gain or loss of a [<sup>F85</sup>business] or part shall be ignored unless found in the currency which is the local currency of the [<sup>F85</sup>business] or part for the relevant accounting period.
- [<sup>F86</sup>(6) In any other case—
- (a) sections 125 to 129 above shall be applied by reference to sterling;
  - (b) those sections shall then be applied separately by reference to each local currency involved (other than sterling); and
  - (c) any exchange gain or loss of a business or part shall be ignored unless found in the currency which is the local currency of the business or part for the relevant accounting period (whether sterling or otherwise).]

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[<sup>F87</sup>(7) For the purposes of this section a part of a business is any part of a business which is treated for the purposes of section 93 above as if it were a separate business for the relevant accounting period.]

#### Textual Amendments

- F81** Words in s. 149(2) substituted (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, s. 106(1)(a)(b)
- F82** Words in s. 149(4) repealed (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, ss. 106(2)(a), 156, Sch. 40 Pt. II(15), note
- F83** Words in s. 149(4)(5) substituted (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, s. 106(2)(b)(3)(b)
- F84** Words in s. 149(5) repealed (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, ss. 106(3)(a), 156, Sch. 40 Pt. II(15), note
- F85** Word in s. 149(5) substituted (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, s. 106(3)(c)
- F86** S. 149(6) substituted (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, s. 106(4)
- F87** S. 149(7) substituted (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, s. 106(5)

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

- C38** S. 149 excluded (1.5.1995) by 1988 c. 1, Sch. 24 para. 14(2)(b) (as inserted (1.5.1995) by 1995 c. 4, s. 133, Sch. 25 paras. 1, 6(5))

### *Exchange rate to be used*

#### **150 Exchange rate at translation times.**

- (1) This section has effect to determine the exchange rate to be used in finding for the purposes of this Chapter the local currency equivalent at a translation time of—
  - (a) the basic valuation of an asset or liability,
  - (b) the nominal amount of a debt outstanding, or
  - (c) an amount of currency.
- (2) References in this section to the two currencies are to—
  - (a) the local currency and the nominal currency of the asset or liability concerned (where this section applies by virtue of subsection (1)(a) or (1)(b) above), or
  - (b) the local currency and the currency mentioned in subsection (1)(c) above (where this section applies by virtue of subsection (1)(c) above).
- (3) References in this section to an arm's length rate are to such exchange rate for the two currencies as might reasonably be expected to be agreed between persons dealing at arm's length.
- (4) Subsections (5) to (7) below apply where the translation time is a translation time solely by virtue of an accounting period of the company coming to an end.
- (5) In a case where—

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- (a) an exchange rate for the two currencies is used (as regards the asset, liability or currency contract concerned) in the accounts of the company for the last day of the accounting period, and
  - (b) the rate is an arm's length rate,that is the exchange rate to be used as regards the asset, liability or contract.
- (6) In a case where—
  - (a) the provision for whose purposes the local currency equivalent falls to be found is section 126 above,
  - (b) an exchange rate for the two currencies is not used (as regards the currency contract concerned) in the accounts of the company for the last day of the accounting period,
  - (c) the fact that such an exchange rate is not so used conforms with normal accountancy practice, and
  - (d) the exchange rate for the two currencies that is implied by the currency contract concerned is an arm's length rate,the exchange rate mentioned in paragraph (d) above is the exchange rate to be used as regards the contract.
- (7) In a case where neither subsection (5) nor subsection (6) above applies, the London closing exchange rate for the two currencies for the last day of the accounting period is the exchange rate to be used.
- (8) Subsections (9) to (14) below apply where the translation time is a translation time otherwise than solely by virtue of an accounting period of the company coming to an end.
- (9) In a case where—
  - (a) an exchange rate for the two currencies is used (as regards the asset, liability or currency contract concerned) in the accounts of the company at the translation time,
  - (b) the rate represents the average of arm's length rates for all the days falling within a period, and
  - (c) the arm's length rate for any given day (other than the first) falling within the period is not significantly different from the arm's length rate for the day preceding the given day,that is the exchange rate to be used as regards the asset, liability or contract.
- (10) In a case where—
  - (a) subsection (9) above does not apply,
  - (b) an exchange rate for the two currencies is used (as regards the asset, liability or currency contract concerned) in the accounts of the company at the translation time, and
  - (c) the rate is an arm's length rate,that is the exchange rate to be used as regards the asset, liability or contract.
- (11) In a case where—
  - (a) the provision for whose purposes the local currency equivalent falls to be found is section 126 above,
  - (b) an exchange rate for the two currencies is not used (as regards the currency contract concerned) in the accounts of the company at the translation time,

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- (c) the fact that such an exchange rate is not so used conforms with normal accountancy practice, and
- (d) the exchange rate for the two currencies that is implied by the currency contract concerned is an arm's length rate,

the exchange rate mentioned in paragraph (d) above is the exchange rate to be used as regards the contract.

(12) In a case where—

- (a) none of subsections (9) to (11) above applies,
- (b) it is the company's normal practice, when using an exchange rate in its accounts, to use a rate which represents an average of exchange rates obtaining for a period, and
- (c) the London closing exchange rate for the two currencies for any given day (other than the first) falling within the relevant period is not significantly different from the London closing exchange rate for the two currencies for the day preceding the given day,

the rate which represents the average of the London closing exchange rates for the currencies for all the days falling within the relevant period is the exchange rate to be used.

(13) In a case where none of subsections (9) to (12) above applies, the London closing exchange rate for the day in which the translation time falls is the exchange rate to be used.

(14) References in subsection (12) above to the relevant period are to the period which—

- (a) begins when the relevant accounting period begins, and
- (b) ends at the end of the day in which the translation time falls;

and the relevant accounting period is the accounting period in which the translation time falls.

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

**C39** S. 150 modified (23.3.1995) by S.I. 1994/3226, reg. 5

**151 Exchange rate for debts whose amounts vary.**

- (1) Subsection (2) below has effect to determine the exchange rate to be used in finding for the purposes of this Chapter the local currency equivalent, at a time immediately after the nominal amount of a debt outstanding increases or decreases, of any amount.
- (2) Subsections (9) to (14) of section 150 above (ignoring subsection (11)) shall apply for that purpose, but in so applying them—
  - (a) references to the translation time shall be construed as references to the time mentioned in subsection (1) above;
  - (b) references to the two currencies shall be construed as references to the local currency and the settlement currency of the debt.

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*Changes to legislation:* There are currently no known outstanding effects for the Finance Act 1993, Part II. (See end of Document for details)

*Interpretation: companies*

**152 Qualifying companies.**

(1) Subject to the following provisions of this section, any company is a qualifying company.

<sup>F88</sup>(2) . . . . .

(3) Where a unit trust scheme is an authorised unit trust as respects an accounting period the trustees (who are deemed to be a company for certain purposes by section 468(1) of the Taxes Act 1988) are not a qualifying company as regards that period.

(4) A company which is approved for the purposes of section 842 of the Taxes Act 1988 (investment trusts) for an accounting period is not a qualifying company as regards that period.

(5) In this section —

“unit trust scheme” has the same meaning as in section 469 of the Taxes Act 1988;

“authorised unit trust” has the same meaning as in section 468 of that Act.

**Textual Amendments**

**F88** S. 152(2) repealed (29.4.1996 with effect in accordance with the provisions of Chapter II of Pt. IV of the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(3)**

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

**C40** S. 152 modified (28.4.1997) by S.I. 1997/1154, **reg. 17**

*Interpretation: assets, liabilities and contracts*

**153 Qualifying assets and liabilities.**

(1) As regards a qualifying company, each of the following is a qualifying asset—

- (a) a right to settlement under a qualifying debt (whether or not the debt is a debt on a security);
- (b) a unit of currency;
- (c) a share held in qualifying circumstances;

but paragraph (a) above shall have effect subject to subsections (3) and (4) below.

(2) As regards a qualifying company, each of the following is a qualifying liability—

- (a) a duty to settle under a qualifying debt (whether or not the debt is a debt on a security);
- (b) a liability that takes the form of a provision made by the company in respect of a duty to which it may become subject and which (if it were to become subject to it) would be a duty to settle under a qualifying debt;
- (c) a duty to transfer a right to settlement under a qualifying debt on a security, where the duty subsists under a contract and the company is not entitled to the right;

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- (d) a duty to transfer a share or shares, where the duty subsists under a contract and the company is not entitled to the share or shares;  
 but paragraphs (a) to (d) above shall have effect subject to subsections (5) to (9) below.
- (3) A right to settlement under a qualifying debt is not a qualifying asset if it is a right under a currency contract.
- [<sup>F89</sup>(4) A right to settlement under a qualifying debt is not a qualifying asset where the company having the right holds an asset representing the debt and that asset is—
- (a) an asset to which section 92 of the Finance Act 1996 applies (convertible securities); or
  - (b) an asset representing a loan relationship to which section 93 of that Act (relationships linked to the value of chargeable assets) applies.]
- (5) A duty to settle under a qualifying debt is not a qualifying liability if it is a duty under a currency contract.
- <sup>F90</sup>(6) .....
- (7) A liability falling within subsection (2)(b) above is not a qualifying liability unless—
- (a) the duty to settle would (if the company were to become subject to it) be owed for the purposes of a trade, and
  - (b) the provision falls to be taken into account (apart from this Chapter) in computing the profits or losses of the trade for corporation tax purposes.
- (8) A duty falling within subsection (2)(c) above is not a qualifying liability unless the right would be a qualifying asset if the company were entitled to it.
- (9) A duty falling within subsection (2)(d) above is not a qualifying liability unless the share (or each of the shares) would be a qualifying asset if the company were entitled to it.
- (10) For the purposes of this section each of the following is a qualifying debt—
- (a) a debt falling to be settled by the payment of money;
  - (b) a debt falling to be settled by the transfer of a right to settlement under another debt, itself falling to be settled by the payment of money;
- and for the purposes of this subsection an ecu shall be regarded as money.
- (11) For the purposes of subsections (1)(c) and (4) above qualifying circumstances, in relation to an asset consisting of a share or a right to settlement, are circumstances where the qualifying company carries on a trade and—
- (a) if the company were to transfer the asset, the transfer would fall to be taken into account (apart from this Chapter) in computing the profits or losses of the trade for corporation tax purposes, and
  - (b) if the asset were held by the company at the end of an accounting period, the valuation of the asset to be shown in the company's accounts for that time would fall to be found by taking the local currency equivalent at that time of the valuation put on the asset by the company (whether at that time or earlier) expressed in the nominal currency of the asset;
- and the reference here to the local currency is to the local currency of the trade for the accounting period.

<sup>F91</sup>(11A) .....

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(12) Interest accrued in respect of a debt shall not be treated as part of the debt.

#### Textual Amendments

- F89** S. 153(4) substituted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 70(1)** (with ss. 80-105, Sch. 15 para. 22(4))
- F90** S. 153(6) repealed (29.4.1996 with effect in accordance with the provisions of Chapter II of Pt. IV of the repealing Act) by 1996 c. 8, ss. 104, 205, **Sch. 14 paras. 70(2), Sch. 41 Pt. V(3)** Note (with ss. 80-105, Sch. 15 para. 22(4))
- F91** S. 153(11A) repealed (29.4.1996 with effect in accordance with the provisions of Chapter II of Pt. IV of the repealing Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(3)** Note (with ss. 80-105)

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

- C41** S. 153(11) modified (1.5.1995) by 1988 c. 1, **Sch. 24 para. 18** (as inserted (1.5.1995) by 1995 c. 4, s. 133, Sch. 25 paras. 1, 6(5))

### 154 Definitions connected with assets.

- (1) Subject to the following provisions of this section, a company becomes entitled to an asset when it becomes unconditionally entitled to it.
- (2) In determining whether or not a company is unconditionally entitled to an asset, any transfer by way of security of the asset or of any interest or right in or over the asset shall be ignored.
- (3) Where a company agrees to acquire an asset by transfer it becomes entitled to it when the contract is made and not on a later transfer made pursuant to the contract; but the preceding provisions of this subsection do not apply where the agreement is by way of a currency contract.
- (4) Where a company agrees to dispose of an asset by transfer it ceases to be entitled to it when the contract is made and not on a later transfer made pursuant to the contract.
- (5) If a contract is conditional (whether on the exercise of an option or otherwise) for the purposes of subsections (3) and (4) above it is made when the condition is satisfied.
- [<sup>F92</sup>(5A) The question whether a company becomes unconditionally entitled at a particular time to an asset falling within section 153(1)(a) above shall be determined without reference to the fact that there is or is not a later time when, or before which, the whole or any part of the debt is required to be paid.
- (5B) Where an asset falling within section 153(1)(a) above consists of a right to interest—
  - (a) a company becomes unconditionally entitled to the asset at the time when or (as the case may be) before which the interest is required to be paid to the company, and
  - (b) subsection (5A) above shall not apply.]
  - (6) Where a company ceases to be entitled to an asset and at a later time becomes entitled to the same asset, with effect from the later time the asset shall be treated as if it were a different asset.
  - (7) In a case where—

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- (a) at different times a company becomes entitled to rights to settlement under debts on securities, and
  - (b) the rights are of the same kind,
- the rights shall be treated as different assets and not part of the same asset.
- (8) Whether a transaction involves a company becoming entitled to—
- (a) one asset consisting of a right to settlement under a debt on a security, or
  - (b) a number of such assets,
- shall be determined according to the facts of the case concerned.
- (9) For the purpose of deciding whether rights to settlement under debts on securities of a particular kind are held by a company, rights of that kind acquired earlier shall be treated as disposed of before rights of that kind acquired later; and references here to acquisition and disposal are references to becoming entitled and ceasing to be entitled.
- (10) For the purpose of deciding whether shares of a particular kind are held by a company, shares of that kind acquired earlier shall be treated as disposed of before shares of that kind acquired later; and references here to acquisition and disposal are references to becoming entitled and ceasing to be entitled.
- (11) In a case where—
- (a) a rule is used for the purpose mentioned in subsection (9) or (10) above when the company's accounts are prepared,
  - (b) the rule differs from that contained in the subsection, and
  - (c) the accounts are prepared in accordance with normal accountancy practice,
- the rule used when the accounts are prepared (and not the rule in the subsection) shall be used for the purpose.
- (12) In a case where—
- (a) a company would (apart from this subsection) become entitled to an asset at a particular time (the later time) by virtue of the preceding provisions of this section,
  - (b) the asset falls within section 153(1)(a) above,
  - (c) the time at which the company, in drawing up its accounts, regards itself as becoming entitled to the asset is a time (the earlier time) earlier than the later time, and
  - (d) the accounts are drawn up in accordance with normal accountancy practice,
- the company shall be taken to have become entitled to the asset at the earlier time and not at the later time.
- [<sup>F93</sup>(12A) So much of any asset as consists in a right to receive interest as respects which any sums fall to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) shall be taken to be an asset to which the company became entitled at the following time (instead of the time for which subsection (12) above provides), that is to say—
- (a) where the sums fall to be brought into account for the purposes of that Chapter in accordance with an authorised accruals basis of accounting, the time when the interest is taken for those purposes to have accrued, and
  - (b) where the sums fall to be brought into account for the purposes of that Chapter in accordance with an authorised mark to market basis of accounting, the time when the interest is taken for those purposes to have become due and payable.]



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(13) Where subsection (12) above applies, as regards any time beginning with the earlier time and ending immediately before the later time the nominal amount of the debt shall be taken to be—

- (a) such amount as the company treats as the nominal amount in its accounts, or
- (b) such amount as it would so treat in accordance with normal accountancy practice (if that amount is different from the amount found under paragraph (a) above).

[<sup>F94</sup>(13A) In a case where—

- (a) a company would (apart from this subsection) become entitled to an asset at a particular time (the earlier time) by virtue of subsections (1) to (11) above,
- (b) the asset falls within section 153(1)(a) above and the debt concerned is a debt on a security, or the asset is a share,
- (c) the time at which the company, in drawing up its accounts, regards itself as becoming entitled to the asset is a time (the later time) later than the earlier time, and
- (d) the accounts are drawn up in accordance with normal accountancy practice, the company shall be taken to become entitled to the asset at the later time and not at the earlier time.

(13B) In a case where—

- (a) a company would (apart from this subsection) cease to be entitled to an asset at a particular time (the earlier time) by virtue of subsections (1) to (11) above,
- (b) the asset falls within section 153(1)(a) above and the debt concerned is a debt on a security, or the asset is a share,
- (c) the time at which the company, in drawing up its accounts, regards itself as ceasing to be entitled to the asset is a time (the later time) later than the earlier time, and
- (d) the accounts are drawn up in accordance with normal accountancy practice, the company shall be taken to cease to be entitled to the asset at the later time and not at the earlier time.]

(14) A company holds an asset at a particular time if it is entitled to it at that time.

#### Textual Amendments

**F92** S. 154(5A)(5B) inserted (3.5.1994) by 1994 c. 9, s. 114(1)

**F93** S. 154(12A) inserted (29.4.1996) by 1996 c. 8, s. 104, Sch. 14 para. 71 (with ss. 80-105)

**F94** S. 154(13A)(13B) inserted (3.5.1994) by 1994 c. 9, s. 114(2)

#### 155 Definitions connected with liabilities.

- (1) Subject to the following provisions of this section, a company becomes subject to a liability falling within section 153(2)(a) above when it becomes unconditionally subject to it.
- (2) Where a company agrees to acquire a liability falling within section 153(2)(a) above by transfer it becomes subject to it when the contract is made and not on a later transfer made pursuant to the contract.

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- (3) Where a company agrees to dispose of a liability falling within section 153(2)(a) above by transfer it ceases to be subject to it when the contract is made and not on a later transfer made pursuant to the contract.
- (4) If a contract is conditional (whether on the exercise of an option or otherwise) for the purposes of subsections (2) and (3) above it is made when the condition is satisfied.
- [<sup>F95</sup>(4A) The question whether a company becomes unconditionally subject at a particular time to a liability falling within section 153(2)(a) above shall be determined without reference to the fact that there is or is not a later time when, or before which, the whole or any part of the debt is required to be paid.
- (4B) Where a liability falling within section 153(2)(a) above consists of a duty to pay interest—
- (a) a company becomes unconditionally subject to the liability at the time when or (as the case may be) before which the company is required to pay the interest, and
  - (b) subsection (4A) above shall not apply.]
- (5) Where a company ceases to be subject to a liability falling within section 153(2)(a) above and at a later time becomes subject to the same liability, with effect from the later time the liability shall be treated as if it were a different liability.
- (6) A company becomes subject to a liability falling within section 153(2)(b) above at the time with effect from which it makes the provision.
- (7) A company ceases to be subject to a liability falling within section 153(2)(b) above at the time with effect from which it deletes the provision or (if different) the time with effect from which it would delete the provision under normal accountancy practice.
- (8) Where a company makes a provision falling within section 153(2)(b) above and later changes the amount, the company shall be treated as—
- (a) deleting (with effect from the time when the change becomes effective) the provision representing the amount before the change, and
  - (b) making (with effect from that time) a new provision representing the amount as changed;
- and so on for further changes.
- (9) A company ceases to be subject to a liability falling within section 153(2)(c) above when it becomes entitled to the right concerned, unless it ceases to be subject to the liability earlier apart from this subsection.
- (10) A company ceases to be subject to a liability falling within section 153(2)(d) above when it becomes entitled to the share or shares, unless it ceases to be subject to the liability earlier apart from this subsection.
- (11) In a case where—
- (a) a company would (apart from this subsection) become subject to a liability at a particular time (the later time) by virtue of the preceding provisions of this section,
  - (b) the liability falls within section 153(2)(a) above,
  - (c) the time at which the company, in drawing up its accounts, regards itself as becoming subject to the liability is a time (the earlier time) earlier than the later time, and

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(d) the accounts are drawn up in accordance with normal accountancy practice, the company shall be taken to have become subject to the liability at the earlier time and not at the later time.

[<sup>F96</sup>(11A) So much of any liability consisting in a liability to pay interest as respects which debits fall to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) shall be taken to be a liability to which the company became subject at the following time (instead of at the time for which subsection (11) above provides), that is to say—

- (a) where the debits fall to be brought into account for the purposes of that Chapter in accordance with an authorised accruals basis of accounting, the time when the interest is taken for those purposes to have accrued, and
- (b) where the debits fall to be brought into account for the purposes of that Chapter in accordance with an authorised mark to market basis of accounting, the time when the interest is taken for those purposes to have become due and payable.]

(12) Where subsection (11) above applies, as regards any time beginning with the earlier time and ending immediately before the later time the nominal amount of the debt shall be taken to be—

- (a) such amount as the company treats as the nominal amount in its accounts, or
- (b) such amount as it would so treat in accordance with normal accountancy practice (if that amount is different from the amount found under paragraph (a) above).

(13) A company owes a liability at a particular time if it is subject to it at that time.

#### Textual Amendments

**F95** S. 155(4A)(4B) inserted (3.5.1994) by 1994 c. 9, s. 114(3)

**F96** S. 155(11A) inserted (29.4.1996) by 1996 c. 8, s. 104, Sch. 14 para. 72 (with ss. 80-105)

#### 156 Assets and liabilities: other matters.

(1) Each of the following questions shall be determined according to the facts of the case concerned—

- (a) whether a transaction (or series of transactions) involves the creation of one asset consisting of a right to settlement under a debt or a number of assets consisting of a number of such rights;
- (b) whether a transaction (or series of transactions) involves the creation of one liability consisting of a duty to settle under a debt or a number of liabilities consisting of a number of such duties;
- (c) whether a transaction (or series of transactions) involves the creation of both an asset (or assets) held and a liability (or liabilities) owed by the same company.

(2) Subsection (3) below applies where—

- (a) a company, in drawing up its accounts, regards itself as becoming entitled or subject to an asset or liability at a particular time,
- (b) the company, in drawing up its accounts, regards itself as ceasing to be entitled or subject to the asset or liability at a later time,

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- (c) at the time mentioned in paragraph (a) above it could reasonably be expected that the company would become entitled or subject to such an asset or liability,
  - (d) the asset or liability does not in fact come into existence before the later time but (if it did) it would fall within section 153(1)(a) or (2)(a) above, and
  - (e) the accounts are drawn up in accordance with normal accountancy practice.
- (3) The company shall be taken to—
- (a) become entitled or subject to such an asset or liability at the time it regards itself as becoming so entitled or subject, and
  - (b) cease to be entitled or subject to such an asset or liability at the time it regards itself as ceasing to be so entitled or subject.
- (4) Where subsection (3) above applies, as regards any time beginning with the time mentioned in subsection (3)(a) and ending with the time mentioned in subsection (3)(b) the nominal amount of the debt shall be taken to be—
- (a) such amount as the company treats as the nominal amount in its accounts, or
  - (b) such amount as it would so treat in accordance with normal accountancy practice (if that amount is different from the amount found under paragraph (a) above).

#### **157 Definitions connected with currency contracts.**

- (1) A company becomes entitled to rights and subject to duties under a currency contract when it enters into the contract.
- (2) A company holds a currency contract at a particular time if it is then entitled to rights and subject to duties under the contract; and it is immaterial when the rights and duties fall to be exercised and performed.

*Interpretation: other provisions*

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

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

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

### **159 Basic valuation.**

- (1) Subject to the following provisions of this section, the basic valuation of an asset or liability is—
- (a) such valuation as the company puts on it with regard to the time immediately after the company becomes entitled or subject to it, or
  - (b) such valuation as the company would put on it with regard to that time under normal accountancy practice, if that valuation is different from that found under paragraph (a) above.
- (2) Where (apart from this subsection) the valuation under subsection (1) above would be in a currency (the actual currency) other than the nominal currency, it shall be taken to be the equivalent, expressed in terms of the nominal currency, of the valuation in the actual currency; and the translation required by this subsection shall be made by reference to the London closing exchange rate for the two currencies concerned for the day in which the time mentioned in subsection (1) above falls.
- (3) The basic valuation of a liability falling within section 153(2)(c) or (d) above is the consideration for the company becoming subject to the liability; and any consideration or part that is not pecuniary shall be taken to be equal to its open market value—
- (a) found at the time when the company becomes subject to the liability, and
  - (b) if part of the consideration is pecuniary, expressed in the same currency as that part.
- (4) Where (apart from this subsection) the valuation under subsection (3) above would be in a currency (the actual currency) other than the nominal currency, it shall be taken to be the equivalent, expressed in terms of the nominal currency, of the valuation in the actual currency; and the translation required by this subsection shall be made by reference to the London closing exchange rate for the two currencies concerned for the day on which the company becomes subject to the liability.
- [<sup>F97</sup>(5) Where—
- (a) a company becomes entitled, on any transfer by virtue of which it becomes a party to a loan relationship, to a right of settlement under a qualifying debt on a security, and
  - (b) that transfer is a transfer with accrued interest,

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the basic valuation of that right shall be found by taking the consideration for the company's becoming entitled to the right and then deducting the amount of the accrued interest the right to which is transferred.]

- (10) Subsections (11) and (12) below apply where—
- (a) section 127 above applies as regards an asset or liability for an accrual period (the earlier period), and
  - (b) section 125 or 127 above applies as regards the asset or liability for the next accrual period (the later period).
- (11) As regards the later period the basic valuation of the asset or liability shall be taken to be—
- (a) the nominal amount of the debt outstanding immediately before the beginning of the later period, or
  - (b) if section 127(7) above also applies as regards the earlier period, the amount found under section 127(10) for that period.
- (12) As regards an accrual period which falls after the later period the basic valuation of the asset or liability shall be the amount found under subsection (11) above, subject to any subsequent application of that subsection.

#### Textual Amendments

**F97** S. 159(5) substituted (29.4.1996 but without application in relation to transfers before 1.4.1996) for s. 159(5)-(9) by 1996 c. 8, s. 104, **Sch. 14 para. 73** (with ss. 80-105)

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

**C42** S. 159 modified (23.3.1995) by S.I. 1994/3226, **regs. 6(1)(6), 8(5)**  
 S. 159 excluded (23.3.1995) by S.I. 1994/3226, **reg. 6(3)**

### 160 Nominal currency of assets and liabilities.

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

### 161 Settlement currency of a debt.

- (1) Subject to the following provisions of this section, the settlement currency of a debt is the currency in which ultimate settlement of the debt falls to be made.
- (2) In a case where—
  - (a) ultimate settlement of a debt falls to be made in a particular currency, but

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

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

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

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

- (1) Subject to subsection (2) below, the local currency of a [<sup>F98</sup>business] for an accounting period is sterling.
- [<sup>F99</sup>(2) Where by virtue of section 93 above the profits or losses of a business or part of a business for an accounting period are to be computed and expressed in a currency other than sterling for the purposes of corporation tax, that other currency is the local currency of the business or part for that period.]
- (4) For the purposes of this section the ecu shall be regarded as a currency other than sterling; and references in this Chapter to a currency other than sterling shall be construed accordingly.

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**Textual Amendments**

- F98** Word in s. 163(1) substituted (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, s. 106(12)
- F99** S. 163(2) substituted for s. 163(2)(3) (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, s. 106(13)

**164 Interpretation: miscellaneous.**

- (1) References to—
  - (a) initial exchange gains and losses,
  - (b) exchange gains and losses of a trade or of part of a trade,
  - (c) non-trading exchange gains and losses, and
  - (d) the accrual of gains and losses mentioned in paragraphs (a) to (c) above,
 shall be construed in accordance with sections 125 to 129 above and Schedule 15 to this Act.
- (2) References to a currency contract shall be construed in accordance with section 126(1) [F100 and (1A)]above.
- (3) References to a qualifying debt shall be construed in accordance with section 153(10) above.
- (4) References to a company’s commencement day shall be construed in accordance with section 165(7) below.
- (5) The local currency equivalent of a valuation of an asset or liability, or of an amount, is that valuation or amount expressed in terms of the local currency (a process sometimes known as translation).
- F101(6) .....
- F101(7) .....
- (8) References to a share are to a share in a company (whether or not the qualifying company).
- (9) Shares are of the same kind if they are treated as being of the same kind by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange.
- (10) Rights to settlement under debts on securities are of the same kind if the securities are treated as being of the same kind by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange.
- (11) “Security”, in the expression “debt on a security”, has the meaning given by section 132 of the M44 Taxation of Chargeable Gains Act 1992.
- F102(12) .....
- (13) References to the ecu are to the European currency unit as defined for the time being in Council Regulation No. 3180/78/EEC or in any Community instrument replacing it.
- (14) “Prescribed” means prescribed by regulations made under this Chapter.



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- (15) A reference to this Chapter includes a reference to regulations made under it and a reference to a provision of this Chapter includes a reference to regulations made under the provision, unless otherwise required by the context or regulations.
- (16) Sections 152 to 163 above, and the preceding provisions of this section, apply for the purposes of this Chapter.

#### Textual Amendments

**F100** Words in s. 165(2) inserted (3.5.1994) by 1994 c. 9, s. 115(3)

**F101** S. 164(6)(7) repealed (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, ss. 106(14), 156, Sch. 40, Pt. II(15), note

**F102** S. 164(12) repealed (29.4.1996 with effect in accordance with the provisions of chapter II of Pt. IV) by 1996 c. 8, s. 205, Sch. 41 Pt. V(3) (with ss. 80-105)

#### Marginal Citations

**M44** 1992 c. 12.

### Miscellaneous

#### 165 Commencement and transitionals.

- (1) This Chapter applies where—
- a qualifying asset is one to which the company becomes entitled on or after the company's commencement day;
  - a qualifying liability is one to which the company becomes subject on or after that day;
  - the rights and duties under a currency contract are ones to which the company becomes entitled and subject on or after that day.
- (2) Where a qualifying asset or liability is held or owed by a qualifying company both immediately before and at the beginning of its commencement day, for the purposes of this Chapter the company shall be treated as becoming entitled or subject to the asset or liability at the beginning of its commencement day.
- (3) Where both immediately before and at the beginning of its commencement day a qualifying company is entitled to rights and subject to duties under a currency contract, for the purposes of this Chapter the company shall be treated as becoming entitled and subject to them at the beginning of its commencement day.
- (4) Regulations may provide that where—
- a qualifying asset or liability is held or owed by a qualifying company both immediately before and at the beginning of its commencement day, and
  - the asset or liability is of a prescribed description,
- subsection (2) above shall not apply and for the purposes of this Chapter the company shall be treated as becoming entitled or subject to the asset or liability at such time (falling after its commencement day) as is found in accordance with prescribed rules.
- (5) Regulations may provide that any rule made under subsection (4) above shall not apply, and that subsection (2) above shall accordingly apply, in a case where the company so elects in accordance with prescribed rules.

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- (6) Schedule 16 to this Act (which contains transitional provisions) shall have effect.
- (7) For the purposes of this section—
- (a) a company's commencement day is the first day of its first accounting period to begin after the day preceding the appointed day;
  - (b) the appointed day is such day as may be appointed by order.
- (8) Subsections (1) to (6) above do not apply for the purposes of construing Schedule 17 to this Act (which contains its own commencement provisions).

**Subordinate Legislation Made**

**P1** S. 165(7)(b) power exercised: 23.3.1995 appointed by S.I. 1994/3224, art. 2

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

**C43** S. 165(2) excluded (23.3.1995) by S.I. 1994/3226, regs. 3(2), 6(2)

**166 Anti-avoidance: change of accounting period.**

- (1) This section applies where—
- (a) a company changes the date on which any accounting period is to begin,
  - (b) if the change had not been made an exchange gain or gains not accruing to the company would have accrued or an exchange loss or losses accruing to the company would not have accrued or an exchange gain or gains accruing would have been bigger or an exchange loss or losses accruing would have been smaller, and
  - (c) the change mentioned in paragraph (a) above was made for the purpose, or for purposes which include the purpose, of securing the non-accrual or reduction of the gain or gains or the accrual or increase of the loss or losses.
- (2) In such a case the inspector or on appeal the Commissioners concerned—
- (a) may in arriving at the exchange gains and losses accruing to the company assume that there had been no such change as is mentioned in subsection (1) (a) above, and
  - (b) may accordingly make, with regard to the accounting period mentioned in subsection (1)(a) above, such adjustment to the company's corporation tax liability as is just and reasonable.
- (3) For the purposes of this section—
- (a) an exchange gain is an exchange gain of a trade or an exchange gain of part of a trade or a non-trading exchange gain;
  - (b) an exchange loss is an exchange loss of a trade or an exchange loss of part of a trade or a non-trading exchange loss.

**167 Orders and regulations.**

- (1) Any power to make an order or regulations under this Chapter shall be exercisable by the Treasury.
- (2) Any power to make an order under this Chapter shall be exercisable by statutory instrument.

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- (3) Any power to make regulations under this Chapter shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.
- (4) Any power to make regulations under this Chapter—
- (a) may be exercised as regards prescribed cases or descriptions of case;
  - (b) may be exercised differently in relation to different cases or descriptions of case.
- (5) Regulations under this Chapter may make provision in such way as the Treasury think fit, and in particular may amend or modify the effect of any enactment (whether or not contained in this Chapter).
- [<sup>F103</sup>(5A) Without prejudice to the generality of any power of the Treasury to amend regulations made under this Chapter, every such power shall include power to make such modifications of any regulations so made as the Treasury consider appropriate in consequence of
- [<sup>F104</sup>(a) the provisions of Chapter II of Part IV of the <sup>M45</sup>Finance Act 1996 (loan relationships); or
  - (b) the provisions of sections 105 and 106 of the Finance Act 2000 (use of local currency).]
- (5B) The power to make any such modifications as are mentioned in [<sup>F105</sup>subsection (5A) (a)] above shall be exercisable so as to apply those modifications in relation to any accounting period of a company ending on or after 1st April 1996.]
- [<sup>F106</sup>(5C) The power to make any such modifications as are mentioned in subsection (5A) (b) above shall be exercisable so as to apply those modifications in relation to any accounting period of a company beginning on or after 1st January 2000.]
- (6) Regulations under this Chapter may include such supplementary, incidental, consequential or transitional provisions as appear to the Treasury to be necessary or expedient.
- (7) No specific provision of this Chapter about regulations shall prejudice the generality of subsections (4) to (6) above.

#### Textual Amendments

**F103** S. 167(5A)(5B) inserted (29.4.1996) by 1996 c. 8, s. 104, **Sch. 14 para. 74** (with ss. 80-105)

**F104** S. 167(5A)(a)(b) substituted for words (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, **s. 106(15)(a)**

**F105** Words in s. 167(5B) substituted (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, **s. 106(15)(b)**

**F106** S. 167(5C) inserted (28.7.2000 with effect as mentioned in s. 106(17) of the amending Act) by 2000 c. 17, **s. 106(15)(c)**

#### Marginal Citations

**M45** 1996 c. 8.

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## 168 Insurance companies.

- (1) Subject to the following provisions of this section, this Chapter shall apply in relation to insurance companies as it applies in relation to other qualifying companies.
- (2) Regulations may make provision about the treatment for corporation tax purposes of exchange differences arising as regards assets and liabilities held or owed by insurance companies.
- (3) Any such provision may be made—
  - (a) about exchange differences arising as regards assets or liabilities (or both) generally or about a proportion of such differences;
  - (b) about exchange differences arising as regards prescribed descriptions of assets or liabilities (or both) or about a proportion of such differences;
  - (c) about exchange differences arising as regards individual assets or liabilities.
- (4) Any such provision may be made about assets or liabilities that are qualifying assets or liabilities, or about those that are not, or about both.
- (5) Regulations under this section may—
  - (a) contain exceptions (whether by reference to categories of insurance business or otherwise);
  - (b) contain provision about the circumstances in which a charge or relief is to arise, its amount, and other matters relating to it;
  - (c) provide for consequential adjustments in a company's corporation tax liability;
  - (d) exclude or modify the effect of any of the provisions of this Chapter.
- (6) References in this section to exchange differences are to gains and losses attributable to fluctuations in currency exchange rates.
- (7) For the purposes of this section an insurance company is <sup>F107</sup>any company which carries on any insurance business (within the meaning of the Insurance Companies Act 1982).

### Textual Amendments

**F107** Words in s. 168(7) substituted (1.5.1995 with effect in relation to any accounting period ending after 30.6.1994) by 1995 c. 4, s. 52(2)(5)

## <sup>F108</sup>168A Application of Chapter to certain companies becoming resident in the United Kingdom.

- (1) In a case where—
  - (a) by virtue of section 751 of the Taxes Act 1988, an exchange gain or an exchange loss accrues to a company for an accrual period constituting or falling within an accounting period during which the company is resident outside the United Kingdom, and
  - (b) the company subsequently becomes resident in the United Kingdom,
 the company shall be treated, for the purposes of applying this Chapter to accounting periods beginning on or after the date when the company becomes resident in the

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United Kingdom, as if the exchange gain or loss mentioned in paragraph (a) above never existed.

(2) In this section—

- (a) references to an exchange gain are to an exchange gain of a trade or an exchange gain of part of a trade or a non-trading exchange gain;
- (b) references to an exchange loss are to an exchange loss of a trade or an exchange loss of part of a trade or a non-trading exchange loss;
- (c) the reference in paragraph (a) of subsection (1) above to an exchange gain or an exchange loss accruing is to the gain or loss accruing before the application of any of sections 131, 136, 137 and 140 above in relation to the accounting period mentioned in that paragraph.]

#### Textual Amendments

**F108** S. 168A inserted (1.5.1995) by 1995 c. 4, s. 133, Sch. 25 para. 7

### 169 Chargeable gains.

Schedule 17 to this Act (provisions which relate to the taxation of chargeable gains and are connected with other provisions of this Chapter) shall have effect.

### 170 Amendments.

Schedule 18 to this Act (which contains amendments) shall have effect.

## CHAPTER III

### LLOYD'S UNDERWRITERS ETC.

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

**C44** Pt. II Chapter III applied (1.5.1995) with application as mentioned in s. 127(19) of the amending Act) by 1995 c. 4, s. 127(16)(a)(19)

**C45** Pt. II Chapter III modified (1.12.1997) with effect with respect to accounting periods of Lloyd's Scottish limited partnerships ending on or after that date) by S.I. 1997/2681, reg. 3(1)(a)

#### *Main provisions*

### 171 Taxation of profits and allowance of losses.

- (1) Income tax for any year of assessment on the profits arising from a member's underwriting business shall be computed on the profits of that year of assessment.
- (2) As respects the profits arising to a member from his underwriting business for any year of assessment—
  - (a) the aggregate of those profits shall be chargeable to tax under Case I of Schedule D; and

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(b) accordingly, no part of those profits shall be chargeable to tax under any other Schedule or any other Case of Schedule D;

but nothing in this subsection shall affect the manner in which the amount of any profits arising from assets forming part of an ancillary trust fund is to be computed.

[<sup>F109</sup>(2A) Where the profits arising for any year of assessment from the assets of a member’s premiums trust fund include dividends which are foreign income dividends for the purposes of Chapter VA of the Taxes Act 1988, subsection (2) above shall apply in relation to the actual amount of those dividends notwithstanding anything in section 246D of that Act.]

<sup>F110</sup>(3) .....

(4) Subsection (2) above does not apply in relation to any profits arising before 6th April 1993 from assets forming part of an ancillary trust fund.

#### Textual Amendments

**F109** S. 171(2A) inserted (3.5.1994 with effect for the year 1992-93 and subsequent years of assessment) by 1994 c. 9, s. 228, **Sch. 21 para. 1(2)(3)(a)**

**F110** S. 171(3) repealed (3.5.1994 with effect for the year 1996-97 and subsequent years of assessment) by 1994 c. 9, ss. 228, 258, **Sch. 21 para. 1(2)(3)(b), Sch. 26 Pt. V(25)** Note 2

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

**C46** S. 171 modified (9.3.1995 with effect in relation to profits or losses of a member's underwriting business arising in the underwriting year 1994 or 1995) by **S.I. 1995/352, reg. 13(1)(3)**

## 172 Year of assessment in which profits or losses arise.

(1) Subject to the provisions of this Chapter, for the purposes of section 171 above and all other purposes of the Income Tax Acts the profits or losses in any year of assessment of a member’s underwriting business shall be taken to be—

- [<sup>F111</sup>(a) in the case of profits or losses arising directly from his membership of one or more syndicates, those of any previous year or years which are declared in the corresponding underwriting year;
- (b) in the case of profits or losses arising from assets forming part of a premiums trust fund, those allocated under the rules or practice of Lloyd’s to any previous year or years the profits or losses of which are declared in the corresponding underwriting year; and]
- (c) in the case of other profits or losses, those derived from payments received or made in the corresponding underwriting year.

(2) Subsection (1)(c) above does not apply in relation to payments received or made before 6th April 1993.

#### Textual Amendments

**F111** S. 172(1)(a)(b) substituted (3.5.1994 with effect as mentioned in **Sch. 21 para. 2(2)** of the amending Act) by 1994 c. 9, s. 228, **Sch. 21 para. 2(1)(2)**

**Status:** Point in time view as at 28/07/2000. This version of this part contains provisions that are not valid for this point in time.  
**Changes to legislation:** There are currently no known outstanding effects for the Finance Act 1993, Part II. (See end of Document for details)

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

**C47** S. 172 modified (1.12.1997 with effect with respect to accounting periods of Lloyd's Scottish limited partnerships ending on or after that date) by S.I. 1997/2681, reg. 6(1)(b)

**173 Assessment and collection of tax.**

- (1) Schedule 19 to this Act (assessment and collection of tax) shall have effect.
- (2) Schedule 19A to the Taxes Act 1988 (which is superseded by Schedule 19 to this Act for the year 1992-93 and subsequent years of assessment) shall have effect as if for subparagraph (3) of paragraph 1 there were substituted the following subparagraph—
  - “(3) Regulations under this paragraph may make provision with respect to any year or years of assessment; and the year (or any of the years) may be the year next but one preceding the year in which the regulations are made or any year following that earlier year.”
- (3) Subsection (2) above applies in relation to regulations made after the passing of this Act.

*Members’ trust funds*

**174 Premiums trust funds.**

- [<sup>F112</sup>(1) For the purposes of the Income Tax Acts and the Gains Tax Acts—
- (a) a member shall be treated as absolutely entitled as against the trustees to the assets forming part of a premiums trust fund of his; and
  - (b) where a deposit required by a regulatory authority in a country or territory outside the United Kingdom is paid out of such a fund, the money so paid shall be treated as still forming part of that fund.]
- (2) Where an asset forms part of a premiums trust fund at the beginning of any underwriting year, for the purposes of the Income Tax Acts—
    - (a) the trustees of the fund shall be treated as acquiring it on that day, and
    - (b) they shall be treated as paying in respect of the acquisition an amount equal to the value of the asset at the time of the acquisition.
  - (3) Where an asset forms part of a premiums trust fund at the end of any underwriting year, for the purposes of the Income Tax Acts—
    - (a) the trustees of the fund shall be treated as disposing of it on that day, and
    - (b) they shall be treated as obtaining in respect of the disposal an amount equal to the value of the asset at the time of the disposal.
  - <sup>F113</sup>(4) .....
  - <sup>F113</sup>(5) .....
  - (6) Subsections (2) to (5) above do not apply to FOTRA securities forming part of a member’s premiums trust fund at the beginning or end of any underwriting year if—
    - (a) the member is not domiciled in the United Kingdom at any time in the year, and



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- (b) he is either not ordinarily resident in the United Kingdom during the year or a non-resident United Kingdom trader in the year.

(7) In this section—

“FOTRA securities” has the same meaning as in section 715 of the Taxes Act 1988 (exceptions from accrued income scheme);

“non-resident United Kingdom trader” shall be construed in accordance with subsection (5) of that section;

“underwriting year” does not include the year 1993 or any earlier underwriting year.

#### Textual Amendments

**F112** S. 174(1) substituted (3.5.1994 with effect for the year 1994-95 and subsequent years of assessment) by 1994 c. 9, s. 228, **Sch. 21 para. 3**

**F113** S. 174(4)(5) repealed (19.3.1997 with effect in relation to, and to transfers under, any arrangement made on or after such day as may be appointed by order) by 1997 c. 16, ss. 76, 113, **Sch. 10 Pt. I paras. 6(a), 7(1), Sch. 18 Pt. VI(10)** Note 1

### 175 Special reserve funds.

- (1) If arrangements are made by the Council of Lloyd's which—
- (a) enable such a special reserve fund as is referred to in Part I of Schedule 20 to this Act to be set up in relation to each member; and
  - (b) comply with the requirements of that Part and are approved by the Board, the provisions of that Part relating to taxation shall have effect in relation to any special reserve fund of a member set up under the arrangements.
- (2) The arrangements may from time to time be varied with the consent of the Board.
- (3) If, after giving notice of their intention to do so to the Council of Lloyd's, the Board cancel the approval which they have given with respect to the arrangements, paragraph 3 of Schedule 20 to this Act shall not apply, in the case of any member, to any year of assessment after the year of assessment in which the approval is cancelled.
- (4) The provisions of Part II of Schedule 20 to this Act shall have effect as respects the winding up of any special reserve fund which—
- (a) was set up under the arrangements mentioned in section 452(1) of the Taxes Act 1988; and
  - (b) belongs to a member for whom a special reserve fund may be set up under the arrangements mentioned in subsection (1) above.

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

**C48** S. 175 excluded (1.12.1997 with effect with respect to accounting periods of Lloyd's Scottish limited partnerships ending on or after that date) by S.I. 1997/2681, **reg. 7**

**C49** S. 175(4) applied (with modifications) (9.3.1995 with application as mentioned in reg. 1 of the amending S.I.) by S.I. 1995/351, **regs. 1, 15(1)**



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**176 Ancillary trust funds.**

- (1) A member shall be treated for the purposes of the Income Tax Acts and the Gains Tax Acts as absolutely entitled as against the trustees to the assets forming part of an ancillary trust fund of his.
- (2) The cost of acquisition and the consideration for the disposal of assets forming part of an ancillary trust fund—
  - (a) shall be left out of account in computing for the purposes of income tax the profits or losses of the member’s underwriting business; and
  - (b) accordingly, shall not be excluded for the purposes of capital gains tax under section 37 or 39 of the Gains Tax Act.
- (3) None of the following provisions (which apply where an individual entitled to securities dies), namely—
  - (a) subsections (1) to (4) of section 721 of the Taxes Act 1988 (accrued income scheme);
  - <sup>F114</sup>(b) .....
  - <sup>F114</sup>(c) .....
  - <sup>F114</sup>(d) .....shall apply where the individual concerned is a member and the security concerned forms part of an ancillary trust fund of his.
- (4) In a case where subsection (3)(a) above applies, the deceased’s personal representatives shall be treated for the purposes of sections 710 to 728 of the Taxes Act 1988 as the transferor or transferee in relation to transfers of securities as to which the deceased was the transferor or transferee (as the case may be) in the interest period in which he died.

**Textual Amendments**

**F114** S. 176(3)(b)-(d) repealed (29.4.1996 with effect in accordance with the provisions of Chapter II of Pt. IV of the amending Act) by 1996 c. 8, s. 205, **Sch. 41 Pt. V(3)**

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

**C50** S. 176 modified (1.12.1997 with effect with respect to accounting periods of Lloyd's Scottish limited partnerships ending on or after that date) by S.I. 1997/2681, **reg. 5(1)**

*Other special cases*

<sup>F115</sup>**177** .....

**Textual Amendments**

**F115** S. 177 repealed (28.7.2000 with effect as mentioned in s. 107(12)(c) of the amending Act) by 2000 c. 17, ss. 107(11), 156, **Sch. 40 Pt. II(16)**, note 2

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## 178 Stop-loss and quota share insurance.

- (1) In computing for the purposes of income tax the profits of a member’s underwriting business, each of the following shall be deductible as an expense, namely—
- (a) any premium payable by him under a stop-loss insurance, and any repayment of insurance money paid to him under such an insurance;
  - (b) any amount payable by him into the High Level Stop Loss Fund, and any repayment of an amount paid to him out of that Fund; and
  - (c) any amount payable by him under a quota share contract, irrespective of the purpose for which the contract was entered into.
- (2) Subject to subsection (3) below, each of the following, namely—
- (a) any insurance money payable to [<sup>F116</sup>a member] under a stop-loss insurance in respect of a loss in his underwriting business; and
  - (b) any amount payable to a member out of the High Level Stop Loss Fund in respect of such a loss,
- shall be treated as a trading receipt in computing the profits arising from that business for the year of assessment which corresponds to the underwriting year in which the loss [<sup>F117</sup>was declared].
- (3) Where, as respects the payment of any such insurance money or amount as is mentioned in subsection (2) above—
- (a) the inspector is not notified of the payment at least 30 days before the time after which any assessment or further assessment of profits for the year of assessment is precluded by section 34 of the Management Act (ordinary time limit of six years), and
  - (b) the inspector is not entitled, after that time, to make any such assessment or further assessment by virtue of section 36 (fraudulent or negligent conduct) or 40(2) (assessment on personal representatives) of that Act,
- that subsection shall have effect in relation to that insurance money or amount as if it referred instead to the year of assessment which corresponds to the underwriting year in which the payment is made.
- (4) In this section “quota share contract” means any contract between a member and another person which—
- (a) is made in accordance with the rules or practice of Lloyd’s; and
  - (b) provides for that other person to take over any rights and liabilities of the member under any of the syndicates of which he is a member.

### Textual Amendments

**F116** Words in s. 178(2) substituted (3.5.1994 with effect as respects insurance money and other amounts payable in respect of losses declared in the underwriting year 1997 or subsequent underwriting years) by 1994 c. 9, s. 228, **Sch. 21 para. 5(1)(a)(2)**

**F117** Words in s. 178(2) substituted (3.5.1994 with effect as respects insurance money and other amounts payable in respect of losses declared in the underwriting year 1997 or subsequent underwriting years) by 1994 c. 9, s. 228, **Sch. 21 para. 5(1)(b)(2)**

### Modifications etc. (not altering text)

**C51** S. 178(3) excluded (9.3.1995 with effect as mentioned in reg. 1 of the amending S.I.) by S.I. 1995/351, **regs. 1, 5(1)(c)**

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### Miscellaneous

#### 179 Cessation: final year of assessment.

- (1) Subject to subsection (5) below, this section applies where a member ceases to carry on his underwriting business, whether by reason of death or otherwise.
- (2) Subject <sup>F118</sup> . . . to the provisions of any regulations made by the Board, the member’s final year of assessment shall be that which corresponds to the underwriting year in which his deposit at Lloyd’s is paid over to him or his personal representatives or assigns.
- <sup>F119</sup>(3) . . . . .
- (4) For the purposes of section 171 above and all other purposes of the Income Tax Acts, any profits or losses arising to the member from his underwriting business which are not taken (by virtue of the provisions of this Chapter) to be profits or losses of an earlier year of assessment shall be taken to be profits or losses of his final year of assessment.
- (5) This section does not apply in any case where the member’s deposit at Lloyd’s is paid over to him or his personal representatives or assigns before 1st January 1993.

#### Textual Amendments

- F118** Words in s. 179(2) repealed (3.5.1994 with effect in any case where the member dies after the end of 1993-94) by 1994 c. 9, ss. 228, 258, Sch. 21 para. 6(1)(3), **Sch. 26 Pt. V(25)** Note 3
- F119** S. 179(3) repealed (3.5.1994 with effect in any case where the member dies after the end of 1993-94) by 1994 c. 9, ss. 228, 258, Sch. 21 para. 6(1)(3), **Sch. 26 Pt. V(25)** Note 3

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

- C52** Ss. 179, 179A excluded (9.3.1995 with application as mentioned in reg. 1 of the amending S.I.) by S.I. 1995/351, **regs. 1, 14(2)**
- SS. 179, 179A excluded (1.12.1997 with effect with respect to accounting periods of Lloyd’s Scottish limited partnerships ending on or after that date) by S.I. 1997/2681, **reg. 4(1)**

#### [<sup>F120</sup>179A] Death of member.

- (1) This section applies where a member ceases to carry on his underwriting business by reason of death.
- (2) For the purposes of assessing the profits of the member’s underwriting business, the member shall be treated as having died at the end of the year of assessment which corresponds to the underwriting year immediately preceding that in which he actually died.
- (3) For the purposes of the Income Tax Acts—
  - (a) the carrying on of the member’s underwriting business by his personal representatives shall not be treated as a change in the persons engaged in the carrying on of that business; and
  - (b) subject to the provisions of any regulations made by the Board, the business shall be treated as continuing until the member’s deposit at Lloyd’s is paid over to his personal representatives.]

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#### Textual Amendments

**F120** S. 179A inserted (3.5.1994 with effect in any case where the member dies after the end of the year 1993-94) by 1994 c. 9, s. 228, **Sch. 21 para. 6(2)(3)**

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

**C53** Ss. 179, 179A excluded (9.3.1995 with application as mentioned in reg. 1 of the amending S.I.) by S.I. 1995/351, **regs. 1, 14(2)**

Ss. 179, 179A excluded (1.12.1997 with effect with respect to accounting periods of Lloyd's Scottish limited partnerships ending on or after that date) by S.I. 1997/2681, **reg. 4(1)**

### 180 Underwriting profits to be earned income.

- (1) In relation to any member, all profits arising to him from his underwriting business—
  - (a) shall be treated for the purposes of the Income Tax Acts as immediately derived from the carrying on by him of that business, and
  - (b) accordingly, shall constitute earned income for those purposes.
- (2) This section does not apply in relation to profits of the year 1992-93 or earlier years of assessment.

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

**C54** S. 180 excluded (1.12.1997 with effect with respect to accounting periods of Lloyd's Scottish limited partnerships ending on or after that date) by S.I. 1997/2681, **reg. 8**

### 181 Lloyd's underwriting agents.

In section 43 of the <sup>M46</sup>Finance Act 1989 (Schedule D: computation), subsections (6) and (7) (which extend certain time limits for persons permitted by the Council of Lloyd's to act as underwriting agents at Lloyd's) shall cease to have effect in relation to periods of account ending on or after 30th June 1993.

#### Marginal Citations

**M46** 1989 c. 26.

### *Supplemental*

### 182 Regulations.

- (1) The Board may by regulations provide—
  - (a) for the assessment and collection of tax charged in accordance with section 171 above (so far as not provided for by Schedule 19 to this Act);
  - (b) for making, in the event of any changes in the rules or practice of Lloyd's, such amendments of this Chapter as appear to the Board to be expedient having regard to those changes;

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- (c) for modifying the application of this Chapter in cases where a syndicate continues after the end of its closing year or a member dies or otherwise ceases to carry on his underwriting business;
  - [<sup>F121</sup>(ca) for modifying the application of this Chapter in relation to cases where assets forming part of a premiums trust fund are the subject of—
    - <sup>F122</sup>(i) .....
    - (ii) any such arrangements or agreements as are mentioned in section 737E(2) and (8) of the Taxes Act 1988 (sale and repurchase of securities etc.);]
  - (d) for giving credit for foreign tax.
- <sup>F123</sup>(2) .....
- <sup>F123</sup>(3) .....
- <sup>F123</sup>(4) .....
- (5) Regulations made, or deemed to have been made, under any of the following enactments (regulations about Lloyd’s underwriters), namely—
- (a) section 451(1) or (1A) of the Taxes Act 1988,
  - (b) section 92(5) of the <sup>M47</sup>Finance Act 1989, or
  - (c) section 209(4) of the Gains Tax Act,
- which were in force immediately before 6th April 1992 shall continue in force for the year 1992-93 and subsequent years of assessment notwithstanding the repeal of that enactment by this Act, and shall be deemed to have been made under this section.

**Textual Amendments**

- F121** S. 182(1)(ca) inserted (1.5.1995) by 1995 c. 4, s. 83(2)
- F122** S. 182(1)(ca)(i) repealed (19.3.1997 with effect in relation to, and to transfers under, any arrangement made on or after such day as may be appointed by order) by 1997 c. 16, ss. 76, 113, Sch. 10 Pt. I paras. 6(a), 7(1), Sch. 18 Pt. VI(10) Note 1
- F123** S. 182(2)-(4) repealed (3.5.1994 with effect for the year 1997-98 and subsequent years of assessment) by 1994 c. 9, ss. 228, 258, Sch. 21 para. 7, Sch. 26 Pt. V(25) Note 4

**Marginal Citations**

- M47** 1989 c. 26.

**183 Consequential amendments.**

- (1) In section 20(2) of the Taxes Act 1988 (Schedule F), for the words “section 450” there shall be substituted the words “ section 171 of the Finance Act 1993 ”.
  - (2) In section 481(5)(f) of that Act (meaning of “relevant deposit”), for the words “section 457) of an underwriting member” there shall be substituted the words “ section 184 of the Finance Act 1993) of an underwriting or former underwriting member ”.
- <sup>F124</sup>(3) .....

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- <sup>F125</sup>(4) In section 710(14) of that Act (meaning of “business” and “premiums trust fund”), for the words “section 457” there shall be substituted the words “ section 184 of the Finance Act 1993 ”.
- (5) In the following provisions (which relate to nominees, trustees etc.), namely—  
 Section 720(3) of the Taxes Act 1988,  
 paragraph 18(1) of Schedule 4 to that Act,  
 paragraph 10(1) of Schedule 11 to the Finance Act 1989, and  
 paragraph 18(1) of Schedule 10 to the <sup>M48</sup>Finance Act 1990,  
 the words from “his special reserve fund” to the end shall be omitted.
- (6) In the following provisions (which relate to the death of a member), namely—  
 section 721(5) of the Taxes Act 1988,  
 paragraph 18(8) of Schedule 4 to that Act,  
 paragraph 10(6) of Schedule 11 to the Finance Act 1989, and  
 paragraph 18(6) of Schedule 10 to the <sup>M49</sup>Finance Act 1990,  
 the words from “a special reserve fund” to the end shall be omitted.
- (7) In section 206(2) of the Gains Tax Act (Lloyd’s underwriters), after the words “subsection (1) above” there shall be inserted the words “ and section 174(1) of the Finance Act 1993 ”.
- (8) In section 209 of that Act (interpretation, regulations about underwriters etc.)—  
 (a) in subsection (1), for the words “sections 450 to 456 of the Taxes Act” there shall be substituted the words “ Chapter III of Part II of the Finance Act 1993 ” and for the words “sections 450 to 456”, in the second place where they occur, there shall be substituted the words “ that Chapter ”; and  
 (b) in subsection (6), the words “or (4)” shall be omitted.

#### Textual Amendments

**F124** S. 183(3) repealed (3.5.1994 with effect for the year 1997-98 and subsequent years of assessment) by 1994 c. 9, ss. 228(2)(c)(4), 230, 258, **Sch. 26 Pt. V(25)** Note 1

**F125** S. 183(4)-(8) repealed (the repeals of subsections (4)-(6) having effect for the year 1994 and subsequent underwriting years and the repeals of subsections (7)-(8) having effect for the year of assessment 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 213, **Sch. 23 Pt. III(12)** Notes 2, 4.

#### Marginal Citations

**M48** 1990 c. 29.

**M49** 1990 c. 29.

## 184 Interpretation and commencement.

- (1) In this Chapter, unless the context otherwise requires—  
 “ancillary trust fund”, in relation to a member, does not include a premiums trust fund of his or his special reserve fund (if any) but, subject to that, means any trust fund required or authorised by the rules of Lloyd’s, or required by a members’ agent of his <sup>F126</sup> . . . ;

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“closing year”—

- (a) in relation to a year of assessment, means the year of assessment next but one following that year;
- (b) in relation to an underwriting year, means the underwriting year next but one following that year; and
- (c) in relation to a syndicate, means the closing year of the underwriting year for which it was formed;

“the Gains Tax Act” means the <sup>M50</sup>Taxation of Chargeable Gains Act 1992 and

“the Gains Tax Acts” means that Act and any other enactments relating to capital gains tax;

“the High Level Stop Loss Fund” means the fund of that name which, under the rules of Lloyd’s, has been established for the year 1993 and subsequent underwriting years;

“inspector” includes any officer of the Board;

“the Management Act” means the <sup>M51</sup>Taxes Management Act 1970;

“managing agent”, in relation to a syndicate and a year of assessment, means—

- (a) the person registered as a managing agent at Lloyd’s who was acting as such an agent for the syndicate at the end of the corresponding underwriting year, or
- (b) such other person as may be determined in accordance with regulations made by the Board;

“member” means [<sup>F127</sup>an individual who is a member of Lloyd’s and] is or has been an underwriting member;

“members’ agent”, in relation to a member of a syndicate and a year of assessment, means—

- (a) the person registered as a members’ agent at Lloyd’s who was acting as such an agent for the member at the end of the corresponding underwriting year, or
- (b) if two or more such persons were so acting and one of them was appointed by the member to be responsible for complying with the requirements of Part II of Schedule 19 to this Act in relation to all of the syndicates of which he is a member, that person, or
- (c) if two or more such persons were so acting and none of them was so appointed, the person who was so acting for the member in his capacity as a member of the syndicate, or
- (d) such other person as may be determined in accordance with regulations made by the Board;

“premiums trust fund” means such a trust fund as is referred to in section 83 of the <sup>M52</sup>Insurance Companies Act 1982;

“prescribed” means prescribed by regulations made by the Board;

“profits” includes gains;

“special reserve fund”, unless the contrary intention appears, means a special reserve fund set up under the arrangements mentioned in section 175(1) above;

“stop-loss insurance” means any insurance taken out by a member against losses in his underwriting business;

“syndicate” means a syndicate of underwriting members of Lloyd’s formed for an underwriting year;

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“underwriting business”, in relation to a member, means his underwriting business as a member of Lloyd’s, whether carried on personally or through an underwriting agent, and does not include any other business carried on by him, and in particular, where he is himself an underwriting agent, does not include his business as such an agent;

“underwriting year” means the calendar year.

(2) For the purposes of this Chapter—

- (a) an underwriting year and a year of assessment shall be deemed to correspond to each other if the underwriting year ends in the year of assessment;
- (b) the profits or losses of a member’s underwriting business include profits or losses arising to him from assets forming part of a premiums trust fund or an ancillary trust fund; and
- (c) any charge made on a member by the [<sup>F128</sup>managing agent] of a syndicate of which he is a member, and any expense incurred on his behalf by the [<sup>F128</sup>managing agent] of such a syndicate, shall be treated as expenses arising directly from his membership of that syndicate.

(3) Subject to any provision to the contrary, the provisions of this Chapter have effect for the year 1992-93 and subsequent years of assessment.

#### Textual Amendments

**F126** Words in definition in s. 184(1) repealed (3.5.1994 with effect for the year 1994-95 and subsequent years of assessment) by 1994 c. 9, ss. 228, 258, Sch. 21 para. 8(1)(a), Sch. 26 Pt. V(25) Note 6

**F127** Words in definition in s. 184(1) substituted (3.5.1994 with effect for the year 1994-95 and subsequent years of assessment) by 1994 c. 9, s. 228, Sch. 21 para. 8(1)(b)

**F128** Words in s. 184(2)(c) substituted (3.5.1994 with effect for the year 1994-95 and subsequent years of assessment) by 1994 c. 9, s. 228, Sch. 21 para. 8(2)

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

**C55** S. 184 applied (1.5.1995 with application as mentioned in s. 127(19) of the amending Act) by 1995 c. 4, s. 127(16)(b)(19)

#### Marginal Citations

**M50** 1992 c. 12.

**M51** 1970 c. 9.

**M52** 1982 c. 50.



**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 1993, Part II.