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# Finance Act 1994

## 1994 CHAPTER 9

### PART IV

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

### CHAPTER II

#### INTEREST RATE AND CURRENCY CONTRACTS

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

- C1** Pt. IV Chapter II (ss. 147-177) restricted (31.7.1998) by 1988 c. 1, **Sch. 28AA para. 8(1)(b)** (as inserted (31.7.1998) by 1998 c. 36, s. 108, **Sch. 16**)
- C2** Pt. IV Chapter II (ss. 147-177) applied (29.4.1996 with effect as mentioned in s. 105(1) of the applying Act) by 1996 c. 8, s. 105, **Sch. 15 para. 25(4)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))
- C3** Pt. IV Chapter II (ss. 147-177) modified (29.4.1996 with effect as mentioned in s. 105(1) of the modifying Act) by 1996 c. 8, s. 105, **Sch. 15 para. 25(2)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))
- C4** Pt. IV Chapter II (ss. 147-177) excluded (29.4.1996 with effect as mentioned in s. 105(1) of the excluding Act) by 1996 c. 8, s. 101(1) (with savings etc. in Pt. IV Chapter II (ss. 80-105))

#### *Qualifying contracts*

#### **147 Qualifying contracts.**

- (1) For the purposes of this Chapter—
- (a) an interest rate contract or option, or
  - (b) a currency contract or option,

is a qualifying contract as regards a qualifying company if the company becomes entitled to rights or subject to duties under the contract or option on or after its commencement day.

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- (2) Where both immediately before and at the beginning of its commencement day—
- (a) a company to which this paragraph applies is entitled to rights or subject to duties under an interest rate contract or option, or
  - (b) a qualifying company is entitled to rights or subject to duties under a currency contract or option,
- for the purposes of this Chapter the company shall be treated as becoming entitled or subject to them at the beginning of that day.
- (3) A qualifying company is a company to which paragraph (a) of subsection (2) above applies if its commencement day falls outside the period of twelve months beginning with the appointed day.
- (4) For the purposes of this Chapter—
- (a) a company's commencement day is the first day of its first accounting period to begin after the day preceding the appointed day; and
  - (b) the appointed day is such day as the Treasury may by order appoint.

#### Subordinate Legislation Made

P1 S. 147(4)(b) power exercised: 23.3.1995 appointed by S.I. 1994/3225, art. 2

#### [<sup>F1</sup>147A Debt contracts and options to be qualifying contracts.

- (1) For the purposes of this Chapter a debt contract or option is a qualifying contract as regards a qualifying company if the company becomes entitled to rights, or subject to duties, under the contract or option at any time on or after 1st April 1996.
- (2) For the purposes of this Chapter a qualifying company which is entitled to rights, or subject to duties, under a debt contract or option both immediately before and on 1st April 1996 shall be deemed to have become entitled or subject to those rights or duties on that date.
- (3) This section has effect subject to paragraph 25 of Schedule 15 to the Finance Act 1996 (transitional provisions).]

#### Textual Amendments

F1 S. 147A inserted (29.4.1996 with effect as mentioned in s. 105(1) of the inserting Act) by 1996 c. 8, s. 101(2) (with savings etc. in Pt. IV Chapter II (ss. 80-105))

#### 148 Contracts which may become qualifying contracts.

- (1) A qualifying company is a company to which this section applies if its commencement day falls within the period of twelve months beginning with the appointed day.
- (2) Subject to subsection (3) below, all quasi-qualifying contracts which, at the end of the period of six years beginning with its commencement day, are held by a company to which this section applies shall be treated for the purposes of this Chapter as if the company became entitled to rights or subject to duties under them on the first day of its first accounting period beginning after the end of the period of six years.

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- (3) Subject to subsection (5) below, if a company to which this section applies so elects, all quasi-qualifying contracts held by the company on its commencement day shall be treated for the purposes of this Chapter as if the company became entitled to rights or subject to duties under them on that day.
- (4) An election by a company under subsection (3) above shall be irrevocable and shall be made by notice served on the inspector before the end of the period of three months beginning with its commencement day.
- (5) A company may not make an election under subsection (3) above at a time when it is a member but not the principal company of a group unless the company did not become a member of the group until after the relevant day.
- (6) An election under subsection (3) above by a company which is the principal company of a group shall have effect also as an election by any other company to which this section applies and which on the relevant day is a member of the group.
- (7) Subsection (6) above shall apply in relation to a company notwithstanding that the company ceases to be a member of the group at any time after the relevant day except where—
  - (a) the company is an outgoing company in relation to the group, and
  - (b) the election relating to the group is made after the company ceases to be a member of the group.
- (8) In this section—

“outgoing company”, in relation to a group of companies, means a company which ceases to be a member of the group before the end of the period during which an election under subsection (3) above could be made in relation to it and at a time when no such election has been made;

“quasi-qualifying contract”, in relation to a qualifying company, means an interest rate contract or option which would be a qualifying contract if the company became entitled to rights or subject to duties under it on or after the company’s commencement day;

“the relevant day” means the principal company’s commencement day.
- (9) Section 170 of the <sup>M1</sup>Taxation of Chargeable Gains Act 1992 (groups of companies) shall have effect for the purposes of this section as for those of sections 171 to 181 of that Act.

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**Marginal Citations**

**M1** 1992 c.12.

*Interest rate and currency contracts and options*

**149 Interest rate contracts and options.**

- (1) A contract is an interest rate contract for the purposes of this Chapter if—
  - (a) the condition mentioned below is fulfilled, and
  - (b) the only transfers of money or money’s worth for which the contract provides are payments falling within subsection (2), (3) or (4) or section 151 below.

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- (2) The condition is that under the contract, whether unconditionally or subject to conditions being fulfilled, a qualifying company becomes entitled to a right to receive, or becomes subject to a duty to make, at a time specified in the contract a variable rate payment.
- (3) An interest rate contract may include provision under which, as the consideration or part of the consideration for a payment falling within subsection (2) above, the qualifying company becomes subject to a duty to make, or (as the case may be) becomes entitled to a right to receive, at a time specified in the contract a fixed or fixed rate payment.
- (4) In so far as the rights and duties mentioned in subsections (2) and (3) above relate to two payments—
- (a) which fall to be made at the same time, and
  - (b) of which one falls to be made to and the other by the qualifying company,
- it is immaterial for the purposes of this section that those rights and duties may be exercised and discharged by a payment made to or, as the case may require, by the company of an amount equal to the difference between the amounts of those payments.
- (5) Each of the following, namely—
- (a) an option to enter into an interest rate contract, and
  - (b) an option to enter into such an option,
- is an interest rate option for the purposes of this Chapter if the only transfers of money or money's worth for which it provides are payments falling within section 151 below.
- (6) In this section—
- “fixed payment” means a payment of a fixed amount specified in the contract;
- “fixed rate payment” means a payment the amount of which falls to be determined (wholly or mainly) by applying to a notional principal amount specified in the contract, for a period so specified, a rate the value of which at all times is the same as that of a fixed rate of interest so specified;
- “variable rate payment” means a payment the amount of which falls to be determined (wholly or mainly) by applying to a notional principal amount specified in the contract, for a period so specified, a rate the value of which at any time is the same as that of a variable rate of interest so specified.

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

C5 S. 149(2) modified (1.1.1999) by S.I. 1998/3177, reg. 8(a)

**150 Currency contracts and options.**

- (1) A contract is a currency contract for the purposes of this Chapter if—
- (a) the condition mentioned below is fulfilled, and
  - (b) the only transfers of money or money's worth for which the contract provides are payments falling within subsection (2), (3), (4) or (9) or section 151 below.
- (2) The condition is that under the contract a qualifying company—
- (a) 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

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- (b) 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).
- (3) A currency contract may include provision under which the qualifying company—
- (a) becomes entitled to a right to receive at a time specified in the contract a payment the amount of which falls to be determined (wholly or mainly) by applying a specified rate of interest to a specified amount of the first currency, and
  - (b) becomes subject to a duty to make at a time so specified a payment the amount of which falls to be determined (wholly or mainly) by applying a specified rate of interest to a specified amount of the second currency.
- (4) A currency contract may also include provision under which the qualifying company—
- (a) becomes entitled to a right and subject to a duty to receive payment at a specified time of a specified amount of the second currency, and
  - (b) becomes entitled to a right and subject to a duty to pay in exchange and at the same time a specified amount of the first currency.
- (5) In subsections (3) and (4) above—
- (a) any reference to a time is a reference to a time earlier than that specified in the contract for the purposes of subsection (2) above, and
  - (b) any reference to a specified rate of interest is a reference to a rate the value of which at any time is the same as that of the specified rate of interest.
- (6) Each of the following, namely—
- (a) an option to enter into a currency contract, and
  - (b) an option to enter into such an option,
- is a currency option for the purposes of this Chapter if the only transfers of money or money's worth for which it provides are payments falling within section 151 below.
- (7) An option the exercise of which at any time would result in a qualifying company—
- (a) becoming entitled to a right and subject to a duty to receive payment at that time of a specified amount of one currency, and
  - (b) becoming entitled to a right and subject to a duty to pay in exchange and at that time a specified amount of another currency,
- is a currency option for the purposes of this Chapter if the only transfers of money or money's worth for which it provides are payments falling within this subsection and section 151 below.
- (8) Where, in the case of a contract which is subject to a condition precedent, the fulfilment of the condition at any time would result in a qualifying company becoming entitled and subject as mentioned in paragraphs (a) and (b) of subsection (7) above, that subsection and the following provisions of this Chapter shall have effect as if—
- (a) the contract before the fulfilment of the condition were such an option as is mentioned in that subsection,
  - (b) the fulfilment of the condition were the exercise of the option, and
  - (c) the contract after the fulfilment of the condition were the contract resulting from the exercise of the option.
- (9) It is immaterial for the purposes of this section that the rights and duties mentioned in subsection (2), (4) or (7) above may be exercised and discharged by a payment made

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to or, as the case may require, by the qualifying company of an amount (in whatever currency) which, at the specified time or the time when the option is exercised, is equivalent in value to the difference between—

- (a) the local currency equivalent at that time of one of the payments there mentioned, and
- (b) the local currency equivalent at that time of the other of those payments.

(10) Subsection (9) above shall be read as applying equally to such of the rights and duties mentioned in subsection (3) above as fall to be exercised and discharged at the same time, and for that purpose shall have effect with such modifications as may be requisite.

[<sup>F2</sup>(11) Subsection (12) below applies where—

- (a) under a contract or as a result of the exercise of an option, a qualifying company becomes entitled to a right and subject to a duty to receive or make a payment at a specified time or at the time when the option is exercised, 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 (9) above which would have fallen to be computed if—
  - (i) the qualifying company had been entitled and subject as mentioned in subsection (2) or (7) above, and
  - (ii) a payment such as is referred to in subsection (9) were to be made to or by the qualifying company.

(12) For the purposes of this Chapter—

- (a) the qualifying company shall be deemed to have become entitled and subject as mentioned in subsection (2) above under the contract referred to in subsection (11) above or, as the case may be, shall be deemed to have become entitled and subject as mentioned in subsection (7) above as a result of the exercise of the option referred to in subsection (11);
- (b) the payment made under the contract or as a result of the exercise of the option shall be treated as if it were a payment falling within subsection (9) 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.]

#### Textual Amendments

**F2** S. 150(11)(12) inserted (23.3.1995) by S.I. 1994/3233, art. 2

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

**C6** S. 150(3) modified (1.1.1999) by S.I. 1998/3177, reg. 9(a)

### [<sup>F3</sup>150A Debt contracts and options.

(1) A contract is a debt contract for the purposes of this Chapter if, not being an interest rate contract or option or a currency contract or option—

- (a) it is a contract under which, whether unconditionally or subject to conditions being fulfilled, a qualifying company has any entitlement, or is subject to any duty, to become a party to a loan relationship; and

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- (b) the only transfers of money or money's worth for which the contract provides (apart from those that will be made under the loan relationship) are payments falling within subsection (5) below and payments falling within section 151 below.
- (2) A contract is also a debt contract for the purposes of this Chapter if, not being a debt contract by virtue of subsection (1) above or an interest rate contract or option or a currency contract or option—
  - (a) it is a contract under which, whether unconditionally or subject to conditions being fulfilled, a qualifying company has any entitlement, or is subject to any duty, to become treated as a person with rights and liabilities corresponding to those of a party to a loan relationship; and
  - (b) the only transfers of money or money's worth for which the contract provides are payments falling within subsection (6) below and payments falling within section 151 below.
- (3) In this section references to an entitlement to become a party to a loan relationship, or to a duty to become such a party, shall be taken to include references, in relation to a specified loan relationship, to either of the following, namely—
  - (a) an entitlement or, as the case may be, a duty to become a party to an equivalent relationship; and
  - (b) an entitlement or, as the case may be, a duty relating to the making of any one or more such payments as fall within subsection (5) below.
- (4) Subsection (3) above shall apply in relation to references in this section to an entitlement or a duty to become treated as a person with rights and liabilities corresponding to those of a party to a loan relationship as it applies to references to an entitlement or, as the case may be, a duty to become such a party.
- (5) The payments falling within this subsection are—
  - (a) a payment of an amount representing the price for becoming a party to the relationship;
  - (b) a payment of an amount determined by reference to the value at any time of the money debt by reference to which the relationship subsists;
  - (c) a settlement payment of an amount determined by reference to the difference at specified times between—
    - (i) the price for becoming a party to the relationship; and
    - (ii) the value of the money debt by reference to which the relationship subsists, or (if the relationship were in existence) would subsist.
- (6) A payment falls within this subsection if it is a settlement payment of an amount determined by reference to the difference at specified times between—
  - (a) the price for becoming treated as a person with rights and liabilities corresponding to those of a party to a relationship; and
  - (b) the value of the money debt by reference to which the relationship subsists or (if the relationship existed) would subsist.
- (7) Each of the following, namely—
  - (a) an option to enter into a contract which would be a debt contract, and
  - (b) an option to enter into such an option,

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is a debt option for the purposes of this Chapter if the only transfers of money or money's worth for which the option provides are payments falling within section 151 below.

- (8) For the purposes of this Chapter where any contract contains both—
- (a) provisions under which, whether unconditionally or subject to conditions being fulfilled, a qualifying company has any entitlement, or is subject to any duty, to become a party to a loan relationship, and
  - (b) any provisions that have effect otherwise than for the purposes of or in relation to the provisions conferring that entitlement or imposing that duty,
- the provisions mentioned in paragraph (a) above, together with the other contents of that contract so far as they are attributable on a just and reasonable basis to the provisions mentioned in that paragraph, shall be treated as a separate contract.
- (9) For the purposes of this Chapter where—
- (a) any attribution of the contents of a contract falls to be made between provisions falling within paragraph (a) of subsection (8) above and provisions falling within paragraph (b) of that subsection, and
  - (b) that contract provides for the making of any payment constituting a transfer of money or money's worth which cannot be attributed to the provisions falling within only one of those paragraphs,
- that payment shall be treated as apportioned between the provisions falling within each of those paragraphs in such manner as may be just and reasonable.
- (10) Expressions used in this section and in Chapter II of Part IV of the Finance Act 1996 have the same meanings in this section as in that Chapter; but references in this section to a loan relationship do not include—
- (a) any loan relationship represented by an asset to which section 92 of that Act (convertible securities) applies; or
  - (b) any loan relationship to which section 93 of that Act (securities indexed to chargeable assets) applies.
- (11) For the purposes of this section and, so far as it relates to a debt contract or option, of section 151 below the transfer of money's worth having a value of any amount shall be treated as the payment of that amount.]

#### Textual Amendments

**F3** S. 150A inserted (29.4.1996 with effect as mentioned in s. 105(1) of the inserting Act) by 1996 c. 8, s. 101(3), **Sch. 12** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

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

**C7** S. 150A modified (1.1.1999) by S.I. 1998/3177, **reg. 11(1)**

### 151 Provisions which may be included.

- (1) An interest rate contract or option, [<sup>F4</sup>a currency contract or option or a debt contract or option], may include provision under which the qualifying company—
- (a) becomes entitled to a right to receive a payment in consideration of its entering into the contract or option, or



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- (b) becomes subject to a duty to make a payment in consideration of another person's entering into the contract or option.
- (2) An interest rate contract or option, [<sup>F4</sup>a currency contract or option or a debt contract or option], may also include provision for all or any of the following—
- (a) a payment of a reasonable fee for arranging the contract or option;
  - (b) a payment of reasonable costs incurred in respect of the contract or option;
  - (c) a payment for securing, or made in consequence of, the variation or termination of the contract or option; and
  - (d) a payment by way of compensation for, or made in consequence of, a failure to comply with the contract or option.

#### Textual Amendments

- F4** Words in s. 151(1)(2) substituted (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 101(4) (with savings etc. in Pt. IV Chapter II (ss. 80-105))

## 152 Provisions which may be disregarded.

- (1) Where—
- (a) but for the inclusion in a contract or option of provisions for one or more transfers of money or money's worth, the contract or option would be a qualifying contract; and
  - (b) as regards the qualifying company and the relevant time, the present value of the transfer, or the aggregate of the present values of the transfers, is small when compared with the aggregate of the present values of all relevant payments,
- the contract or option shall be treated for the purposes of section 149 or, as the case may be, section 150 [<sup>F5</sup>or 150A] above as if those provisions were not included in it.
- (2) For the purposes of subsection (1) above—
- (a) any present value of a relevant payment which is a negative value shall be treated as if it were the equivalent positive value; and
  - (b) any relevant payment the amount of which represents the difference between two other amounts shall be treated as if it were a payment of an amount equal to the aggregate of those amounts.
- (3) In this section—
- “relevant payments” means—
- (a) in relation to a contract, qualifying payments under the contract;
  - (b) in relation to an option, qualifying payments under the option and payments which, if it were exercised, would be qualifying payments under the contract arising by virtue of its exercise;
- “the relevant time” means the time when the contract or option was entered into or, if later, the time when the provisions were included in the contract or option.

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### Textual Amendments

- F5** Words in s. 152(1) inserted (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 101(5) (with savings etc. in Pt. IV Chapter II (ss. 80-105))

### *Other basic definitions*

#### 153 Qualifying payments.

- (1) Subject to subsections (2) to (5) below, in this Chapter “qualifying payment” means—
  - (a) in relation to a qualifying contract which is an interest rate contract, a payment falling within section 149(2), (3) or (4) above;
  - (b) in relation to a qualifying contract which is a currency contract, a payment falling within subsection (3) or (9) of section 150 above;
  - (c) in relation to a qualifying contract which is a currency option, a payment falling within subsection (9) of that section;
  - [<sup>F6</sup>(ca) in relation to a qualifying contract which is a debt contract, a payment falling within section 150A(5) or (6) above; and]
  - (d) in relation to any qualifying contract, a payment falling within section 151 above.
- (2) In this Chapter “qualifying payment” includes, in relation to a qualifying contract—
  - (a) a payment which, if it were a payment under the contract, would be a payment falling within section 151 above; and
  - (b) a payment for securing the acquisition or disposal of the contract.
- (3) Where a qualifying company closes out a qualifying contract which is an interest rate or currency contract by entering into another contract with obligations which are reciprocal to those of the qualifying contract—
  - (a) any payment received by the company in consideration of its entering into the reciprocal contract, or paid by the company in consideration of another person’s entering into that contract, is for the purposes of this Chapter a qualifying payment in relation to the qualifying contract; and
  - (b) all other payments under the reciprocal contract, and all subsequent payments under the qualifying contract, shall be ignored for all purposes of the Tax Acts.
- (4) Subsection (5) below applies where, in the case of a qualifying contract which is a currency contract, there is a difference between—
  - (a) the local currency equivalent, at the time immediately after the qualifying company becomes entitled to rights and subject to duties under the contract, of the amount of the first currency (the first currency equivalent), and
  - (b) the local currency equivalent, at that time, of the amount of the second currency (the second currency equivalent).
- (5) The amount of the difference shall be treated for the purposes of this Chapter—
  - (a) where the first currency equivalent exceeds the second currency equivalent, as a qualifying payment received by the qualifying company at the time specified in the contract for the purposes of section 150(2) above, and
  - (b) where the first currency equivalent is less than the second currency equivalent, as a qualifying payment made by the qualifying company at that time.

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### Textual Amendments

- F6** S. 153(1)(ca) and the word “and” immediately following it substituted for the word “and” at the end of para. (c) (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 101(6) (with savings etc. in Pt. IV Chapter II (ss. 80-105))

## 154 Qualifying companies.

- (1) Subject to subsections (2) and (3) below, any company is a qualifying company for the purposes of this Chapter.
- (2) 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, as regards that period, a qualifying company for the purposes of this Chapter.
- (3) A company which is approved for the purposes of section 842 of the Taxes Act 1988 (investment trusts) for an accounting period is not, as regards that period, a qualifying company for the purposes of this Chapter so far as it relates to currency contracts and options.
- (4) In this section—
  - “authorised unit trust” has the same meaning as in section 468 of the Taxes Act 1988;
  - “unit trust scheme” has the same meaning as in section 469 of that Act.

### Modifications etc. (not altering text)

- C8** S. 154 modified (28.4.1997) by S.I. 1997/1154, reg. 18

### *Accrual of profits and losses*

## 155 Accrual of profits and losses.

- (1) Where, as regards a qualifying contract held by a qualifying company and an accounting period, amount A exceeds amount B, a profit on the contract of an amount equal to the excess accrues to the company for the period.
- (2) Where, as regards a qualifying contract held by a qualifying company and an accounting period, amount B exceeds amount A, a loss on the contract of an amount equal to the excess accrues to the company for the period.
- (3) Subsections (4) and (5) below have effect for the purposes of this section, sections 158 and 161 to 167 below and paragraph 2 of Schedule 18 to this Act; and any reference in any of those sections or that paragraph to amount A or amount B is a reference to that amount after the making of any adjustments under such of those sections as precede that section or paragraph.
- (4) Where as regards a qualifying contract a qualifying company’s profit or loss for an accounting period falls to be computed on a mark to market basis incorporating a particular method of valuation—

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- (a) amount A is the aggregate of—
    - (i) the amount or aggregate amount of the qualifying payment or payments becoming due and payable to the company in the period, and
    - (ii) any increase for the period, or the part of the period for which the contract is held by the company, in the value of the contract as determined by that method, and
  - (b) amount B is the aggregate of—
    - (i) the amount or aggregate amount of the qualifying payment or payments becoming due and payable by the company in the period, and
    - (ii) any reduction for the period, or the part of the period for which the contract is held by the company, in the value of the contract as so determined.
- (5) Where as regards a qualifying contract a qualifying company's profit or loss for an accounting period falls to be computed on a particular accruals basis—
- (a) amount A is so much of the qualifying payment or payments received or falling to be received by the company as is allocated to the period on that basis, and
  - (b) amount B is so much of the qualifying payment or payments made or falling to be made by the company as is so allocated.
- (6) Where a qualifying contract is such a contract by reason of being treated, by virtue of section 152 above, as if any provisions for one or more transfers of money or money's worth were not included in it—
- (a) so much of any qualifying payment as relates to the transfer or transfers shall be ignored for the purposes of subsections (4) and (5) above, and
  - (b) so much of any such increase or reduction as is mentioned in paragraph (a) or (b) of subsection (4) above as so relates shall be ignored for the purposes of that subsection.
- (7) Subject to subsection (8) below, where a qualifying contract—
- (a) becomes held by a qualifying company at any time in an accounting period, or
  - (b) ceases to be so held at any such time,
- it shall be assumed for the purposes of subsection (4) above that its value is nil immediately after it becomes so held or, as the case may be, immediately before it ceases to be so held.
- (8) Subsection (7)(b) above does not apply where a qualifying contract is discharged by the making of payments none of which is a qualifying payment for the purposes of this Chapter.

## **156 Basis of accounting: general.**

- (1) Where, for the purposes of a qualifying company's accounts, profits and losses for an accounting period on a qualifying contract held by the company are computed on—
- (a) a mark to market basis of accounting which satisfies the requirements of this section, or
  - (b) an accruals basis of accounting which satisfies those requirements,

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profits and losses for the period on the contract shall be computed on that basis for the purposes of this Chapter.

- (2) Where subsection (1) above does not apply in the case of a qualifying contract held by a qualifying company and an accounting period, profits and losses for the period on the contract shall be computed for the purposes of this Chapter on a mark to market or accruals basis of accounting which—
  - (a) satisfies the requirements of this section, and
  - (b) is specified in an agreement between the company and the inspector or, in default of such an agreement, in a notice served on the company by the inspector.
- (3) A mark to market basis of accounting satisfies the requirements of this section as regards a qualifying contract if—
  - (a) computing the profits or losses on the contract on that basis is in accordance with normal accountancy practice;
  - (b) all relevant payments under the contract are allocated to the accounting periods in which they become due and payable; and
  - (c) the method of valuation adopted is such as to secure the contract is brought into account at a fair value.
- (4) An accruals basis of accounting satisfies the requirements of this section as regards a qualifying contract if—
  - (a) computing the profits or losses on the contract on that basis is in accordance with normal accountancy practice;
  - (b) all relevant payments under the contract are allocated to the accounting periods to which they relate, without regard to the accounting periods in which they are made or received, or become due and payable; and
  - (c) where such payments relate to two or more such periods, they are apportioned between those periods on a just and reasonable basis.
- (5) In determining whether, as regards a qualifying contract, a relevant payment is dealt with as mentioned in subsection (4) above—
  - (a) regard shall be had to the accounting period or periods to which any reciprocal payment or payments are allocated, and to the basis on which any such payment or payments are apportioned between two or more such periods, but
  - (b) no regard shall be had to the accounting period or periods to which any other payment or payments are allocated, or to the basis on which any such payment or payments are so apportioned.
- (6) References in this section to a qualifying company's accounts shall be construed as follows—
  - (a) in the case of a company formed and registered under the <sup>M2</sup>Companies Act 1985, as references to its accounts drawn up in accordance with the requirements of that Act;
  - (b) in the case of a company formed and registered under the <sup>M3</sup>Companies (Northern Ireland) Order 1986, as references to its accounts drawn up in accordance with the requirements of that Order;
  - (c) in any other case, as references to the accounts which it is required to keep under the law of its home State or, if it is not so required to keep accounts, such of its accounts as most closely correspond to the accounts mentioned in paragraph (a) above;

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and for the purposes of paragraph (c) above the home State of a company is the country or territory under whose law the company is incorporated.

(7) In this section—

“fair value”, in relation to a qualifying contract, means the amount which, if the qualifying company disposed of the contract to a knowledgeable and willing party dealing at arm’s length, it would be able to obtain or, as the case may be, would have to pay;

“reciprocal payment”, in relation to a relevant payment, means another such payment which is the consideration or part of the consideration for that payment;

“relevant payment” means a qualifying payment made or received, or falling to be made or received, by the company.

(8) In the above definition of “reciprocal payment”, the second reference to a relevant payment includes a reference to any payment which—

- (a) is subject to a condition precedent, and
- (b) would be a relevant payment if the condition were fulfilled.

#### **Marginal Citations**

**M2** 1985 c. 6.

**M3** S.I. 1986/1032 (N.I.6).

### **157 Basis of accounting for linked currency options.**

- (1) As regards a qualifying contract which is a linked currency option, a qualifying company’s profit or loss for an accounting period shall be computed on a mark to market basis of accounting.
- (2) Accordingly if, as regards such an option, a qualifying company’s profit or loss for an accounting period would, apart from subsection (1) above, fall to be computed on an accruals basis of accounting, that profit or loss shall be computed for the purposes of this Chapter on a mark to market basis of accounting which—
  - (a) satisfies the requirements of section 156 above, or would satisfy those requirements if paragraph (a) of subsection (3) of that section were omitted, and
  - (b) is specified in an agreement between the company and the inspector or, in default of such an agreement, in a notice served on the company by the inspector.
- (3) A currency option is a linked currency option for the purposes of this section if each of the conditions mentioned below is fulfilled.
- (4) The first condition is that—
  - (a) in the case of an option exercisable by the qualifying company against the other party, another currency option is exercisable by that party against the company; or
  - (b) in the case of an option exercisable by the other party against the qualifying company, another currency option is exercisable by the company against that party.

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- (5) For the purposes of subsection (4) above, another currency option which is exercisable by or against an associated company of the qualifying company, or by or against an associated company of the other party to the currency option in question, shall be treated as exercisable by or against the qualifying company or that party.
- (6) The second condition is that the terms of the two options are such that—
  - (a) they must be exercised (if at all) at the same, or substantially the same, time, and
  - (b) the rights and duties under the contract which would arise if the one option were exercised are the same, or substantially the same, as those under the contract which would arise if the other option were exercised.
- (7) Where the currency option in question is such an option by virtue of section 150(8) above, subsections (4) and (5) above shall be construed as if—
  - (a) any reference to an option being exercisable by any person were a reference to a contract subject to a condition precedent the fulfilment of which would result in a transfer of value to that person, and
  - (b) any reference to an option being exercisable against any person were a reference to a contract subject to a condition precedent the fulfilment of which would result in a transfer of value by that person.
- (8) For the purposes of subsection (7) above there is a transfer of value to or by any person if, immediately after the fulfilment of the condition, the value of that person's net assets is more or, as the case may be, less than it would have been but for the fulfilment of the condition.
- (9) Any reference in subsection (8) above to the value of a person's net assets being more or less than it would have been but for the fulfilment of the condition includes a reference to the value of that person's net liabilities being less or, as the case may be, more than it would have been but for the fulfilment of the condition.
- (10) In this section "associated company" shall be construed in accordance with section 416 of the Taxes Act 1988 and any reference to a currency option is a reference to one which is a qualifying contract.

## **158 Adjustments for changes in basis of accounting.**

- (1) Subsections (2) to (5) below apply where, as regards a qualifying contract and an accounting period, a qualifying company's profit or loss is computed on a basis of accounting (the new basis) other than that adopted for the immediately preceding accounting period.
- (2) There shall be added to amount A an amount equal to any amount, or the aggregate of any amounts—
  - (a) which have not been included in amount A for a preceding accounting period, and
  - (b) which would have been so included if the new basis had been adopted for that period.
- (3) There shall be deducted from amount A or, as the case may require, added to amount B an amount equal to any amount, or the aggregate of any amounts—
  - (a) which have been included in amount A for a preceding accounting period, and

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- (b) which would not have been so included if the new basis had been adopted for that period.
- (4) There shall be added to amount B an amount equal to any amount, or the aggregate of any amounts—
  - (a) which have not been included in amount B for a preceding accounting period, and
  - (b) which would have been so included if the new basis had been adopted for that period.
- (5) There shall be deducted from amount B or, as the case may require, added to amount A an amount equal to any amount, or the aggregate of any amounts—
  - (a) which have been included in amount B for a preceding accounting period, and
  - (b) which would not have been so included if the new basis had been adopted for that period.
- (6) Subject to subsection (7) below, subsections (2) to (5) above also apply where a contract or option becomes a qualifying contract by virtue of section 147(2) or 148(2) or (3) above at the beginning of the first day of an accounting period of a qualifying company.
- (7) Where subsections (2) to (5) above apply by virtue of subsection (6) above, they shall have effect as if—
  - (a) any reference to the new basis were a reference to the basis of accounting on which, as regards the qualifying contract, the company's profit or loss for the accounting period is calculated,
  - (b) any reference to being or not being included in amount A for a preceding accounting period were a reference to being or not being taken into account as receipts or increases in value in computing the company's profits or losses for such a period, and
  - (c) any reference to being or not being included in amount B for a preceding accounting period were a reference to being or not being taken into account as deductions or reductions in value in computing the company's profits or losses for such a period.

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

**C9** S. 158(2)-(5) modified (29.4.1996 with effect as mentioned in s. 105(1) of the modifying Act) by 1996 c. 8, s. 105, **Sch. 15 para. 25(3)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

*Treatment of profits and losses*

**159 Trading profits and losses.**

- (1) Subsections (2) and (3) below apply where—
  - (a) as regards a qualifying contract a profit or loss accrues to a qualifying company for an accounting period, and
  - (b) the qualifying contract was at any time in the period held by the company for the purposes of a trade or part of a trade carried on by it.



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- (2) If throughout the accounting period the qualifying contract was held by the company solely for the purposes of the trade or part, the whole of the profit or loss shall be treated for the purposes of the Tax Acts as a profit or loss of the trade or part for the period.
- (3) In any other case the profit or loss shall be apportioned on a just and reasonable basis and so much as is attributable to the trade or part shall be treated for the purposes of the Tax Acts as a profit or loss of the trade or part for the period.
- (4) The preceding provisions of this section apply notwithstanding anything in section 74 of the Taxes Act 1988 (general rules as to deductions not allowable).

## 160 Non-trading profits and losses.

- (1) In a case where—
  - (a) as regards a qualifying contract a profit or loss accrues to a qualifying company for an accounting period, and
  - (b) the whole or part of the profit or loss does not fall to be treated for the purposes of the Tax Acts as a profit or loss of a trade or part of a trade for the period, the whole or part (as the case may be) shall be treated for the purposes of this section as a non-trading profit or loss of the company for the period.
- [<sup>F7</sup>(2) Any amount which for the purposes of this section is treated as a non-trading profit of a company for any accounting period shall be brought into account for that accounting period as if it were a non-trading credit falling to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in respect of a loan relationship of the company.
- (2A) Any amount which for the purposes of this section is treated as a non-trading loss of a company for any accounting period shall be brought into account for that accounting period as if it were a non-trading debit falling to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in respect.]

### Textual Amendments

- F7** [S. 160\(2\)\(2A\)](#) substituted for s. 160(2)-(4) (29.4.1996 with effect as mentioned in [s. 105\(1\)](#) of the amending Act) by [1996 c. 8, s. 104, Sch. 14 para. 75](#) (with savings etc. [Pt. IV Chapter II \(ss. 80-105\)](#))

### *Special cases*

## 161 Termination etc. of qualifying contracts.

- (1) This section applies where at any time (the relevant time) in an accounting period of a qualifying company—
  - (a) a qualifying contract held by the company is terminated,
  - (b) such a contract is disposed of by the company, or
  - (c) a contract held by the company is so varied as to cease to be such a contract.
- (2) If, as regards the contract and the period, amounts A and B fall to be determined under section 155(5) above—

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- (a) there shall be deducted from amount A or, as the case may require, added to amount B so much of any qualifying payment as has not become due and payable to the company before the relevant time but has been included in amount A for the period or any previous accounting period, and
- (b) there shall be deducted from amount B or, as the case may require, added to amount A so much of any qualifying payment as has not become due and payable by the company before the relevant time but has been included in amount B for the period or any previous accounting period.

## 162 Exchange gains and losses on currency contracts.

Where, as regards a currency contract held by a qualifying company and an accounting period, amounts A and B fall to be determined under section 155(4) above—

- (a) the amount of any exchange gain which as regards the contract accrues to the company for the period shall be deducted from amount A or, as the case may require, added to amount B; and
- (b) the amount of any exchange loss which as regards the contract accrues to the company for the period shall be deducted from amount B or, as the case may require, added to amount A.

## 163 Irrecoverable payments.

- (1) Subsections (2) and (3) below apply in any case [<sup>F8</sup>where a qualifying company—
  - (a) is entitled to a right to receive a qualifying payment, and
  - (b) makes a claim] within two years after the end of an accounting period of the company, that the whole or any part of the payment outstanding immediately before the end of that period could at that time reasonably have been regarded as having become irrecoverable in that period.
- (2) If, as regards the contract and the period, amounts A and B fall to be determined under section 155(4) above, an amount equal to so much of the payment as—
  - (a) [<sup>F9</sup>may reasonably be regarded as having] become irrecoverable in the period, and
  - (b) became due and payable in the period or any previous accounting period, shall be deducted from amount A, or as the case may require, added to amount B.
- (3) If, as regards the contract and the period, amounts A and B fall to be determined under section 155(5) above, an amount equal to so much of the payment as—
  - (a) [<sup>F9</sup>may reasonably be regarded as having] become irrecoverable in the period, and
  - (b) was allocated to the period or any previous accounting period, shall be deducted from amount A, or as the case may require, added to amount B.
- (4) In any case where—
  - (a) as regards a qualifying contract and an accounting period of a qualifying company, an amount has been deducted or added as mentioned in subsection (2) or (3) above, and
  - (b) the whole or any part of so much of the qualifying payment as [<sup>F10</sup>fell within paragraphs (a) and (b) of that subsection] is recovered in a later accounting period of the company,

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an amount equal to so much of the payment as is so recovered shall, as regards the qualifying contract and the later accounting period, be deducted from amount B, or as the case may require, added to amount A.

#### Textual Amendments

- F8** Words in s. 163(1) substituted (29.4.1996 with effect as mentioned in s. 134(2) of the amending Act) by 1996 c. 8, s. 134, **Sch. 20 para. 71(2)**
- F9** Words in s. 163(2)(a)(3)(a) substituted (29.4.1996 with effect as mentioned in s. 134(2) of the amending Act) by 1996 c. 8, s. 134, **Sch. 20 para. 71(3)**
- F10** Words in s. 163(4)(b) substituted (29.4.1996 with effect as mentioned in s. 134(2) of the amending Act) by 1996 c. 8, s. 134, **Sch. 20 para. 71(4)**

### 164 Released payments.

- (1) Subsections (2) and (3) below apply in any case where—
- a qualifying company is subject to a duty to make a qualifying payment, and
  - at any time in an accounting period of the company, the whole or any part of the payment then outstanding is released by the person to whom the duty is owed.
- (2) If, as regards the contract and the period, amounts A and B fall to be determined under section 155(4) above, an amount equal to so much of the payment as—
- is released in the period, and
  - became due and payable in the period or any previous accounting period,
- shall be deducted from amount B, or as the case may require, added to amount A.
- (3) If, as regards the contract and the period, amounts A and B fall to be determined under section 155(5) above, an amount equal to so much of the payment as—
- is released in the period, and
  - was allocated to the period or any previous accounting period,
- shall be deducted from amount B, or as the case may require, added to amount A.

#### *Anti-avoidance and related provisions*

### 165 Transfers of value by qualifying companies.

- (1) Subsection (2) below applies where, as a result of—
- a qualifying company entering into a relevant transaction on or after its commencement day, or
  - the expiry on or after a qualifying company's commencement day of an option held by the company which, until its expiry, was a qualifying contract,
- there is a transfer of value by the qualifying company to an associated company or an associated third party.
- (2) For the accounting period of the qualifying company in which the transaction was entered into or the option expired, there shall be deducted from amount B or, as the case may require, added to amount A an amount equal to the value transferred by that company.

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- (3) For the purposes of subsection (1) above there is a transfer of value by the qualifying company to an associated company or an associated third party if, immediately after the transaction or expiry—
- (a) the value of the qualifying company's net assets is less, and
  - (b) the value of the associated company's or associated third party's net assets is more,
- than it would have been but for the transaction or expiry; and the amount by which the value mentioned in paragraph (a) above is less is the value transferred by the qualifying company for the purposes of subsection (2) above.
- (4) Any reference in subsection (3) above to the value of a person's net assets being less or more than it would have been but for the transaction or expiry includes a reference to the value of that person's net liabilities being more or, as the case may be, less than it would have been but for the transaction or expiry.
- (5) In applying subsection (3) above, no account shall be taken of any such payment as is mentioned in section 151(2)(a) or (b) above.
- (6) A third party, that is to say, a person who is not an associated company, is an associated third party for the purposes of this section at the time when the relevant transaction is entered or the option expires if, at that time, each of the two conditions mentioned below is fulfilled.
- (7) The first condition is that the relevant transaction is entered into or the option is allowed to expire in pursuance of arrangements made with the third party.
- (8) The second condition is that, in pursuance of those arrangements, a transfer of value has been or will be made to an associated company (directly or indirectly) by the third party or by a company which was at the time when the arrangements were made an associated company of that party.
- (9) Where it appears to the inspector that there is a transfer of value by the qualifying company to a third party, he may by notice in writing require the company, within such time (which shall not be less than 30 days) as may be specified in the notice, to furnish to the inspector such information—
- (a) as is in its possession or power, and
  - (b) as the inspector reasonably requires for the purpose of determining whether the third party is an associated third party for the purposes of this section.
- (10) Subsection (3) above shall (with the necessary modifications) apply for the purposes of subsections (7) to (9) above as it applies for the purposes of subsection (1) above.
- (11) In this section—
- “associated company” shall be construed in accordance with section 416 of the Taxes Act 1988;
- “relevant transaction” means a transaction as a result of which—
- (a) a qualifying company becomes party to a qualifying contract, or
  - (b) the terms of a qualifying contract to which a qualifying company is party are varied;
- and any reference to an associated company is, unless the contrary intention appears, a reference to an associated company of the qualifying company.

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## **166 Transfers of value to associated companies.**

- (1) Subsection (2) below applies where subsection (2) of section 165 above applies and either—
  - (a) the transfer of value by the qualifying company is to an associated company which is itself a qualifying company; or
  - (b) the transfer of value by the qualifying company is to an associated third party, and the transfer of value mentioned in subsection (8) of that section—
    - (i) is to an associated company which is itself a qualifying company, and
    - (ii) results from that company entering into a relevant transaction.
- (2) For the corresponding accounting period or periods of the associated company, there shall be deducted from amount A or, as the case may require, added to amount B an amount equal to the value transferred to the associated company.
- (3) Subsection (3) of section 165 above shall (with the necessary modifications) apply for the purposes of subsection (2) above as it applies for the purposes of subsection (2) of that section.
- (4) In subsection (2) above “corresponding accounting period or periods”, in relation to the associated company, means the accounting period or periods of that company comprising or together comprising the accounting period of the qualifying company in which the transaction was entered into or the option expired, and any necessary apportionment shall be made between corresponding accounting periods if more than one.
- (5) In this section any expressions which are also used in section 165 above shall be construed in accordance with the provisions of that section.

## **167 Transactions not at arm’s length.**

- (1) A transaction entered into on or after a qualifying company’s commencement day is a relevant transaction for the purposes of this section if as a result of the transaction—
  - (a) the qualifying company becomes party to a qualifying contract, or
  - (b) the terms of a qualifying contract to which the qualifying company is party are varied.
- (2) Subsections (3) to (5) below apply where—
  - (a) if the parties to a relevant transaction had been dealing at arm’s length, the transaction—
    - (i) would not have been entered into at all, or
    - (ii) would have been entered into on different terms, and
  - (b) the Board direct that those subsections shall apply,but subject, in a case falling within paragraph (a)(ii) above, to the modifications made by subsection (7) below.
- (3) For each relevant accounting period for the whole of which the other party is a qualifying company, the following deductions shall be made—
  - (a) from amount B, a deduction of such amount as may be necessary to reduce amount B to nil, and
  - (b) from amount A, a deduction of such amount as may be necessary to reduce amount A to nil.

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- (4) For each relevant accounting period for any part of which the other party is not a qualifying company, the following deductions shall be made—
- (a) from amount B, a deduction of such amount as may be necessary to reduce amount B to nil, and
  - (b) from amount A, a deduction of the same amount or (where that amount exceeds amount A) a deduction of so much of that amount as may be necessary to reduce amount A to nil.
- (5) For each relevant accounting period (except the first) for any part of which the other party is not a qualifying company, there shall also be deducted from amount A or, as the case may require, added to amount B such amount as may be necessary to secure that amount C does not exceed amount D where—
- (a) amount C is any amount by which the aggregate of adjusted amounts A exceeds the aggregate of adjusted amounts B, and
  - (b) amount D is any amount by which the aggregate of unadjusted amounts A exceeds the aggregate of unadjusted amounts B.
- (6) In subsection (5) above—
- “adjusted” means adjusted under subsections (4) and (5) above and “unadjusted” shall be construed accordingly;
- “the aggregate of adjusted amounts A”, in relation to a relevant accounting period, means the aggregate of—
- (a) adjusted amount A for that period, and
  - (b) adjusted amount A for each preceding relevant accounting period,
- and similar expressions shall be construed accordingly.
- (7) In a case falling within subsection (2)(a)(ii) above—
- (a) subsections (3) to (5) above shall have effect as if any reference to amount A or amount B were a reference to the relevant proportion of that amount; and
  - (b) the definitions in subsection (6) above of “the aggregate of adjusted amounts A” and similar expressions shall have effect as if any reference to adjusted amount A were a reference to the adjusted relevant proportion of amount A;
- and in this subsection “the relevant proportion” means such proportion as may be just and reasonable having regard to the differences between the terms mentioned in subsection (2)(a)(ii) above and the terms on which the relevant transaction was actually entered into.
- (8) In applying subsections (2) and (7) above—
- (a) no account shall be taken of any transfer of value in respect of which an adjustment is made under section 165 or 166 above, but
  - (b) subject to that, all factors shall be taken into account.
- (9) The factors which may be so taken into account include—
- (a) in a case where the qualifying contract is an interest rate contract or option, any notional principal amounts and rates of interest that would have been involved;
  - (b) in a case where the qualifying contract is a currency contract or option, any currencies and amounts that would have been involved;
  - [<sup>F11</sup>(ba) in a case where the qualifying contract is a debt contract or option, the amount of the debt by reference to which any loan relationship that would have been

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involved would have subsisted, and any terms as to repayment, redemption or interest that, in the case of that debt or any asset representing it, would have been involved; and]

- (c) in [<sup>F12</sup>any such] case, any transactions which are related to the relevant transaction.

(10) In this section “relevant accounting period”, in relation to a relevant transaction, means—

- (a) the accounting period of the qualifying company in which the transaction was entered into, and  
(b) each subsequent accounting period of that company for the whole or part of which it is party to the contract.

#### Textual Amendments

**F11** S. 167(9)(ba) inserted (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 76(1)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

**F12** Words in s. 167(9)(c) substituted (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 76(2)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

### 168 Qualifying contracts with non-residents.

- (1) Subject to subsections (3) to (5) below, subsections (4) and (5) of section 167 above (“the relevant subsections”) also apply where, as a result of any transaction entered into on or after a qualifying company’s commencement day—
- (a) the qualifying company and a non-resident, that is, a person who is not resident in the United Kingdom, both become party to a qualifying contract;
- (b) the qualifying company becomes party to a qualifying contract to which a non-resident is party; or
- (c) a non-resident becomes party to a qualifying contract to which the qualifying company is party.
- (2) For the purposes of the relevant subsections as so applied, the definition of “relevant accounting period” in subsection (10) of that section shall have effect as if—
- (a) any reference to a relevant transaction were a reference to the transaction mentioned in subsection (1) above; and
- (b) in paragraph (b), for the words “it is” there were substituted the words “both it and the non-resident are”.
- (3) The relevant subsections shall not apply where the qualifying company is a bank, building society or financial trader and—
- (a) it holds the qualifying contract solely for the purposes of a trade or part of a trade carried on by it in the United Kingdom, and
- (b) it is party to the contract otherwise than as agent or nominee of another person.
- (4) The relevant subsections shall not apply where—
- (a) the non-resident holds the qualifying contract solely for the purposes of a trade or part of a trade carried on by him in the United Kingdom through a branch or agency, and
- (b) he is party to the contract otherwise than as agent or nominee of another person.

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- (5) The relevant subsections shall not apply where arrangements made with the government of the territory in which the non-resident is resident—
- (a) have effect by virtue of section 788 of the Taxes Act 1988, and
  - (b) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements).
- (6) Where the non-resident is party to the contract as agent or nominee of another person, subsection (5) above shall have effect as if the reference to the territory in which the non-resident is resident were a reference to the territory in which that other person is resident.

VALID FROM 24/07/2002

### **[<sup>F13</sup>168A] Qualifying contracts for unallowable purposes**

- (1) Where in any accounting period a qualifying contract to which a company is party has an unallowable purpose, any amounts which for that period fall, in the case of the company, to be brought into account for the purposes of section 155 above as part of amount B shall (subject to subsection (2) below) not include so much of the amounts given by the accounting method used as respects the contract as, on a just and reasonable apportionment, is referable to the unallowable purpose.
- (2) The total of any amounts which by virtue of subsection (1) above are not to be brought into account in the accounting period as part of amount B may not exceed the maximum amount.
- (3) For the purposes of subsection (2) above, the maximum amount, in relation to the accounting period, is—
  - (a) if in the accounting period amount B exceeds amount A, the amount by which amount B exceeds amount A; and
  - (b) if in the accounting period amount A exceeds or equals amount B, nil.
- (4) For the purposes of subsection (3) above, amount A and amount B shall be determined in relation to the qualifying contract in accordance with section 155 above and, in so determining amount B, so much of any amount as is referable to the unallowable purpose of the contract shall (notwithstanding subsection (1) above) be brought into account.
- (5) For the purposes of this section a qualifying contract to which a company is party shall be taken to have an unallowable purpose in an accounting period where the purposes for which, at times during that period, the company is party to the contract include a purpose (“the unallowable purpose”) which is not amongst the business or other commercial purposes of the company.
- (6) For the purposes of this section the business and other commercial purposes of a company do not include the purposes of any part of its activities in respect of which it is not within the charge to corporation tax.
- (7) For the purposes of this section, where one of the purposes for which a company is party to a qualifying contract at any time is a tax avoidance purpose, that purpose shall be taken to be a business or other commercial purpose of the company only where it is not the main purpose, or one of the main purposes, for which the company is party to the contract at that time.



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- (8) The reference in subsection (7) above to a tax avoidance purpose is a reference to any purpose that consists in securing a tax advantage (whether for the company or any other person).
- (9) In this section “tax advantage” has the same meaning as in Chapter 1 of Part 17 of the Taxes Act 1988 (tax avoidance).]

#### Textual Amendments

**F13** S.168A inserted (with effect as mentioned in s. 69(2)4) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 69\(1\)](#)

### Miscellaneous

#### 169 Insurance and mutual trading companies.

- (1) Subject to the provisions of Schedule 18 to this Act and subsection (2) below, this Chapter shall apply in relation to insurance companies and mutual trading companies as it applies in relation to other qualifying companies.
- (2) The Treasury may by regulations provide that this Chapter shall have effect in relation to currency contracts held by insurance companies with such modifications as may be specified in the regulations.
- (3) Regulations under subsection (2) above may make different provision as respects contracts held for different purposes or in different circumstances.

#### 170 Investment trusts.

- (1) For the purpose of determining whether a qualifying company may be approved for the purposes of section 842 of the Taxes Act 1988 (investment trusts) for any accounting period, any non-trading profits which the company is treated for the purposes of section 160 above as having for that period shall be treated as income derived from shares or securities.
- (2) In this section “shares” has the same meaning as in section 842 of the Taxes Act 1988.

<sup>F14</sup>171 .....

#### Textual Amendments

**F14** S. 171 repealed (29.4.1996 with effect as mentioned in s. 105(1) of the repealing Act) by [1996 c. 8, s. 205, Sch. 41 Pt. V\(3\)](#), Note (with savings etc. in Pt. IV Chapter II (ss. 80-105))

#### 172 Partnerships involving qualifying companies.

- (1) Subject to the provisions of this section, this Chapter shall have effect as if qualifying partnerships were qualifying companies.

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- (2) A partnership is a qualifying partnership for the purposes of this section if one or more of the partners are qualifying companies.
- (3) Subsections (4) to (6) below apply where—
  - (a) one or more of the members of a qualifying partnership are not qualifying companies, and
  - (b) as regards one or more qualifying contracts, one or more profits or losses accrue to the partnership for an accounting period.
- (4) Two computations of the profits and losses for the period shall be made under subsection (1) of section 114 of the Taxes Act 1988 (partnerships involving companies: special rules for computing profits and losses)—
  - (a) one (the first computation) on the basis that the partnership is a qualifying partnership, and
  - (b) the other (the second computation) on the basis that the partnership is not such a partnership.
- (5) The first computation shall be used for the purpose of determining, under subsection (2) of that section, the share or shares of such of the partners as are qualifying companies.
- (6) The second computation shall be used for the purpose of determining, under that subsection, the share or shares of such of the partners as are not qualifying companies.

### *Supplemental*

#### **173 Prevention of double charging etc.**

- (1) Subsection (2) below applies to any amount—
  - (a) which under or by virtue of this Chapter is chargeable to corporation tax as profits of a qualifying company, or
  - (b) which falls to be taken into account as a receipt in computing for the purposes of this Chapter the profits or losses of such a company.
- (2) An amount to which this subsection applies—
  - (a) shall not otherwise than under or by virtue of this Chapter be chargeable to corporation tax as profits of the company,
  - (b) shall not be taken into account as a receipt in computing for other purposes of the Tax Acts the profits or losses of the company, and
  - (c) for the purposes of the <sup>M4</sup>Taxation of Chargeable Gains Act 1992, shall be excluded from the consideration for a disposal of assets taken into account in the computation of the gain.
- (3) Subsection (4) below applies to any amount—
  - (a) which is allowable as a deduction in computing for the purposes of this Chapter the profits or losses of a qualifying company, or
  - (b) which under or by virtue of this Chapter is allowable as a deduction in computing any other income or profits or gains or losses of such a company for the purposes of the Tax Acts, or
  - (c) which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or gains;

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and that subsection applies to any such amount irrespective of whether effect is or would be given to the deduction in computing the amount of tax chargeable or by discharge or repayment of tax or in any other way.

- (4) An amount to which this subsection applies—
- (a) shall not be allowable as a deduction in computing for other purposes of the Tax Acts the profits or losses of the company,
  - (b) shall not otherwise than under or by virtue of this Chapter be allowable as a deduction in computing any other income or profits or gains or losses of the company for the purposes of the Tax Acts,
  - (c) shall not be treated as a charge on income for the purposes of corporation tax, and
  - (d) shall be excluded from the sums allowable under section 38 of the <sup>M5</sup>Taxation of Chargeable Gains Act 1992 as a deduction in the computation of the gain.
- (5) In this section—
- (a) references to the purposes of this Chapter include references to the purposes of [<sup>F15</sup>Chapter II of Part IV of the Finance Act 1996 (loan relationships), so far as that Chapter is applied by virtue of section 160(2) or (2A) above,] and
  - (b) references to other purposes of the Tax Acts are references to the purposes of those Acts other than those of this Chapter.

#### Textual Amendments

**F15** Words in s. 173(5)(a) substituted (29.4.1996 with effect as mentioned in s. 105(1) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 77** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

#### Marginal Citations

**M4** 1992 c.12.

**M5** 1992 c.12.

## 174 Prevention of deduction of tax.

Notwithstanding anything in section 349 of the Taxes Act 1988 or any other provision of the Tax Acts, a qualifying company shall not be required, on making a qualifying payment, to deduct out of it any sum representing an amount of income tax on it.

## 175 Transitional provisions.

- (1) In a case where—
- (a) at any time, a currency contract held by a qualifying company becomes a qualifying contract by virtue of section 147(2) above, and
  - (b) at that time, it is held for the purposes of a trade or part of a trade carried on by the company, [<sup>F16</sup>and
  - (c) the circumstances are such that if any profit or loss accrues (or were to accrue) to the company as regards the contract for an accounting period beginning before that time it falls (or would fall) to be taken into account as a profit or loss of the trade or part,]

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subsection (4) of section 153 above shall have effect in relation to the contract and the company as if section 147(2) above applied for the purposes of this Chapter except those of that subsection.

[<sup>F17</sup>(2) In a case where—

- (a) at any time, a currency contract held by a qualifying company becomes a qualifying contract by virtue of section 147(2) above, and
- (b) the circumstances are such that if any profit or loss accrues (or were to accrue) to the company as regards the contract for the accounting period beginning with that time it does not fall (or would not fall) to be taken into account as a profit or loss of a trade or part of a trade carried on by the company,

in applying section 158(2) and (4) above in relation to the contract and the period section 153(4) and (5) above shall be treated as omitted.]

#### Textual Amendments

- F16** S. 175(1)(c) and the word “and” immediately preceding it inserted (*retrospectively*) by 1995 c. 4, s. 132(1)(2)
- F17** S. 175(2) substituted (*retrospectively*) by 1995 c. 4, s. 132(1)(3)

### 176 Minor and consequential amendments.

<sup>F18</sup>(1) .....

(2) In Schedule 27 to that Act (distributing funds) in paragraph 5 (United Kingdom equivalent profits) the following sub-paragraph shall be substituted for sub-paragraph (2A)—

“(2A) In applying sub-paragraph (1) above the effect of the following shall be ignored, namely—

- (a) sections 125 to 133 of the Finance Act 1993 (exchange gains and losses), and
- (b) sections 159 and 160 of, and paragraph 1 of Schedule 18 to, the Finance Act 1994 (treatment of profits and losses on interest rate and currency contracts).”

#### Textual Amendments

- F18** S. 176(1) repealed (1.5.1995 with effect as mentioned in Sch. 8 para. 57 of the repealing Act) by 1995 c. 4, s. 162, Sch. 29 Pt. VIII(5), Note 2 (with Sch. 8 paras. 55(2), 57(1))

### 177 Interpretation of Chapter II.

(1) In this Chapter—

“appointed day” has the meaning given by section 147(4) above;

“bank” means any of the following—

- (a) the Bank of England;
- (b) any institution authorised under the <sup>M6</sup>Banking Act 1987; and
- (c) a European authorised institution which has lawfully established a branch in the United Kingdom for the purpose of accepting deposits;

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- “commencement day” has the meaning given by section 147(4) above  
[<sup>F19</sup>—
- (a) for the purposes of this Chapter as it has effect in relation to any debt contract or option, means (subject to paragraph 25 of Schedule 15 to the Finance Act 1996) 1st April 1996; and
- (b) for all other purposes] has the meaning given by section 147(4) above;
- “currency contract” and “currency option” shall be construed in accordance with section 150 above;
- [<sup>F20</sup>“debt contract” and “debt option” shall be construed in accordance with section 150A above;]
- “deposit” has the same meaning as in the <sup>M7</sup>Banking Act 1987;
- “European authorised institution” has the same meaning as in the <sup>M8</sup>Banking Coordination (Second Council Directive) Regulations 1992;
- “financial trader” means any of the following—
- (a) an authorised person under Chapter III of Part I of the <sup>M9</sup>Financial Services Act 1986;
- (b) an exempted person under section 43 of that Act;
- (c) a European authorised institution which has lawfully established a branch in the United Kingdom for the purpose of carrying on investment business; and
- (d) any person not falling within paragraphs (a) to (c) above who is approved by the Board for the purposes of this paragraph;
- “inspector” includes any officer of the Board;
- “insurance company” means a company [<sup>F21</sup>which carries on any insurance business (within the meaning of the <sup>M10</sup>Insurance Companies Act 1982);]
- “interest rate contract” and “interest rate option” shall be construed in accordance with section 149 above;
- “investment business” has the same meaning as in the <sup>M11</sup>Financial Services Act 1986;
- “mutual trading company” means a company carrying on any business of mutual trading or mutual insurance or other mutual business;
- “qualifying company” has the meaning given by section 154 above;
- “qualifying contract” has the meaning given by section 147(1) above;
- “qualifying payment” shall be construed in accordance with section 153 above.
- (2) For the purposes of this Chapter—
- (a) a company becomes entitled to rights or subject to duties under an interest rate contract or option, [<sup>F22</sup>a currency contract or option or a debt contract or option] when it becomes party to the contract or option; and
- (b) a company holds such a contract or option at a particular time if it is then entitled to rights or subject to duties under it;
- and it is immaterial for the purposes of paragraph (b) above when the rights or duties fall to be exercised or performed.
- (3) Any provision of this Chapter other than section 167 above which requires any amount (the relevant amount) to be deducted from amount A or, as the case may require, added to amount B shall be construed as requiring the following deductions or additions to be made—

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- (a) where amount A is not less than the relevant amount, a deduction from amount A of an amount equal to the relevant amount;
  - (b) where amount A is less than the relevant amount but is more than nil—
    - (i) a deduction from amount A of an amount equal to so much of the relevant amount as may be necessary to reduce amount A to nil, and
    - (ii) an addition to amount B of an amount equal to the remainder of the relevant amount;
  - (c) where amount A is nil, an addition to amount B of an amount equal to the relevant amount.
- (4) Subsection (3) above shall be read as applying equally to any such provision which requires any amount to be deducted from amount B or, as the case may be, added to amount A, and for that purpose shall have effect with such modifications as may be requisite.
- (5) In this Chapter expressions which are not defined or otherwise explained but are used in Chapter II of Part II of the <sup>M12</sup>Finance Act 1993 (exchange gains and losses) have the same meanings as in that Chapter.
- (6) The Treasury may by order amend any of sections 149 to 153 above; and any such order may—
- (a) make corresponding amendments to section 126 of the <sup>M13</sup>Finance Act 1993;
  - (b) make consequential amendments to such of the provisions of this Chapter or Chapter II of Part II of that Act as relate to currency contracts; and
  - (c) contain such other consequential provisions, and such supplementary, incidental or transitional provisions, as appear to the Treasury to be necessary or expedient.

#### Textual Amendments

- F19** S. 177(1): Words in the definition of “commencement day” inserted (29.4.1996 with effect as mentioned in s. 105(2) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 78(1)(a)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))
- F20** S. 177(1): Definitions of “debt contract” and “debt option” inserted (29.4.1996 with effect as mentioned in s. 105(2) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 78(1)(b)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))
- F21** S. 177(1): Words in the definition of “insurance company” substituted (1.5.1995 with effect as mentioned in s. 52(5) of the amending Act) by 1995 c. 4, s. 52(3)
- F22** Words in s. 177(2)(a) substituted (29.4.1996 with effect as mentioned in s. 105(2) of the amending Act) by 1996 c. 8, s. 104, **Sch. 14 para. 78(2)** (with savings etc. in Pt. IV Chapter II (ss. 80-105))

#### Marginal Citations

- M6** 1987 c. 22.  
**M7** 1987 c. 22.  
**M8** S.I. 1992/3218.  
**M9** 1986 c. 60.  
**M10** 1982 c. 50  
**M11** 1986 c. 60.  
**M12** 1993 c.34.  
**M13** 1993 c.34.

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