



Finance Act 1994

1994 CHAPTER 9

PART IV

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER II

INTEREST RATE AND CURRENCY CONTRACTS

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 ^{M1}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

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- (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;
- 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 ^{M2}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 subsections (5), (6) and (9) of section 129 and sections 130 to 133 of the ^{M3}Finance Act 1993 (non-trading exchange gains and losses), and
 - (b) references to other purposes of the Tax Acts are references to the purposes of those Acts other than those of this Chapter.

Marginal Citations

- M1** 1992 c.12.
- M2** 1992 c.12.
- M3** 1993 c.34.

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, [^{F1}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.

[^{F2}(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

- F1** S. 175(1)(c) and the word “and” immediately preceding it inserted (*retrospectively*) by 1995 c. 4, s. 132(1)(2)
- F2** S. 175(2) substituted (*retrospectively*) by 1995 c. 4, s. 132(1)(3)

176 Minor and consequential amendments.

(1) In section 434A(1) of the Taxes Act 1988 (limitations on loss relief and group relief), for the words from “under” to “Part X” there shall be substituted the following paragraphs—

- “(a) under Chapter II (loss relief) or Chapter IV (group relief) of Part X, or
- (b) under Chapter II of Part II of the Finance Act 1993 so far as it has effect in relation to losses treated as non-trading losses for the purposes of section 160 of the Finance Act 1994.”

(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).”

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 ^{M4}Banking Act 1987; and

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- (c) a European authorised institution which has lawfully established a branch in the United Kingdom for the purpose of accepting deposits;
 “commencement day” has the meaning given by section 147(4) above;
 “currency contract” and “currency option” shall be construed in accordance with section 150 above;
 “deposit” has the same meaning as in the ^{M5}Banking Act 1987;
 “European authorised institution” has the same meaning as in the ^{M6}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 ^{M7}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 to which Part II of the ^{M8}Insurance Companies Act 1982 applies;
- “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 ^{M9}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, or a currency 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—

- (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

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- (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 ^{M10}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 ^{M11}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.

Marginal Citations

- M4** 1987 c. 22.
- M5** 1987 c. 22.
- M6** S.I. 1992/3218.
- M7** 1986 c. 60.
- M8** 1982 c.50.
- M9** 1986 c. 60.
- M10** 1993 c.34.
- M11** 1993 c.34.

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