
STATUTORY INSTRUMENTS

1994 No. 3226

**The Exchange Gains and Losses
(Transitional Provisions) Regulations 1994**

PART IV

**PRE—COMMENCEMENT GAINS AND
LOSSES: DEBTS OF FIXED AMOUNTS**

Application, etc. of Part IV

17.—(1) This Part applies in relation to an existing asset or liability held or owed by a company which immediately before its commencement day was within the charge to corporation tax where—

- (a) the asset or liability is the right to settlement of a debt or the duty to settle a debt which in either case is fixed (within the meaning of regulation 3) as to its amount or its term (or both), and
- (b) any exchange difference accruing to the company on a disposal or settlement by the company of the asset or liability immediately before the company's commencement day would not have been taken into account, or would not have been wholly taken into account, for the purposes of corporation tax in computing the company's profits and gains of that accounting period or would not be so taken into account if the company had been within the charge to corporation tax at the time the gain or loss accrued.

(2) For the purposes of the Tables set out in regulation 20, all amounts shall be taken to be positive, but for all other computations for the purposes of this Part, an amount which is a gain shall be taken to be a positive figure and an amount which is a loss shall be taken to be a negative figure.

(3) Regulations 18 to 20 have effect subject to regulations 21 and 22, and in regulations 18, 19 and 21 "the current period" has the same meaning as in regulation 20.

Post—commencement net gains and losses and pre—commencement gains and losses

18.—(1) Where this Part applies, there shall be calculated the aggregate amount of the initial exchange gains and losses which have accrued as respects the asset or liability for all accrual periods including the current period, and that aggregate amount is referred to in this Part, if positive, as "the post—commencement net gain" and if negative as "the post—commencement net loss".

(2) Where the aggregate amount found under paragraph (1) above for all accrual periods including the current period is zero, then—

- (a) if the aggregate amount for all accrual periods preceding the current period was a post—commencement net gain, there shall be a post—commencement net gain equal to zero; and
- (b) if the aggregate amount for all accrual periods preceding the current period was a post—commencement net loss, or there is no such aggregate amount, there shall be a post—commencement net loss equal to zero.

(3) Where this Part applies, there shall be calculated the aggregate amount of the exchange differences which have accrued as respects the asset or liability for accounting periods before the company's commencement day, disregarding realised exchange differences and any unrealised exchange difference which has been taken into account in computing the profits or gains of the company for the purposes of corporation tax for any such accounting period, and the result is referred to in this Part, if positive, as "the pre— commencement gain" and if negative as "the pre— commencement loss".

(4) In any case where the asset or liability is held at the end of the current period for the purposes of a trade or part of a trade the local currency of which is not sterling, that local currency shall be used in making the calculations required by paragraphs (1), (2) and (3) above.

(5) For the purposes of paragraph (1) above, the question whether any initial exchange gain or loss has accrued, and if so its amount, shall be determined disregarding regulations 20 to 22 and the regulation 2(2) provisions.

Overall exchange gains and losses and cumulative taxed gains and losses

19.—(1) Where this Part applies, there shall be calculated the aggregate amount of—

- (a) the pre—commencement gain or loss, and
- (b) the post—commencement net gain or loss.

(2) The aggregate amount found in accordance with paragraph (1) above is referred to in this Part, if positive, as "the overall exchange gain", Z, and if negative as "the overall exchange loss", W, and if the aggregate is zero there shall be an overall exchange loss of zero.

(3) In the case of any asset or liability to which this Part applies and as respects which an initial exchange gain or loss has accrued for the current period, there shall be calculated the aggregate amount of the initial exchange gains and losses which have accrued to the company as respects the asset or liability for accrual periods earlier than the current period, and—

- (a) if that aggregate amount is positive it shall be the cumulative taxed gain, G, for that asset or liability for the current period,
- (b) if it is negative it shall be the cumulative taxed loss, L, for that asset or liability for the current period, and
- (c) in cases where that aggregate amount is zero there shall be taken to be a cumulative taxed loss equal to zero for the period.

(4) For the purposes of paragraph (3) above—

- (a) the question whether any initial exchange gain or loss has accrued for the current period shall be determined disregarding regulations 20 to 22 and the regulation 2(2) provisions;
- (b) the question whether any initial exchange gain or loss has accrued for any period other than the current period shall be determined in accordance with this Part but as if the regulation 2(2) provisions had never come into force; and
- (c) there shall be disregarded any gain or loss which has accrued for an accrual period other than the current period unless—
 - (i) it has been taken into account in computing the profits or gains of the company holding or owing the asset or liability for the purposes of corporation tax for accounting periods ending before the beginning of the current period, or
 - (ii) it would have been so taken into account if the regulation 2(2) provisions had never come into force; or
 - (iii) it is equal to zero.

Deemed gains and losses

20. Table C or D set out below (as appropriate) shall apply in relation to an asset or liability as respects which an initial exchange gain or loss accrues to a company for an accrual period (“the current period”), determined disregarding this regulation and regulations 21 and 22 and the regulation 2(2) provisions, and as respects which there is—

- (a) a post—commencement net gain, X, or
- (b) a post—commencement net loss, Y,

and if the primary condition and the secondary condition (if any) are satisfied, any initial exchange gain or loss which (apart from this regulation) would accrue to the company for the current period (“the actual gain or loss”) shall be deemed not to accrue but the gain or loss specified in the third column of the Table in relation to those conditions shall be deemed to accrue and shall be an initial exchange gain or loss (as the case may be) accruing in the place of the actual gain or loss.

TABLE C

If there is a post—commencement net gain X

Primary condition	Secondary condition	Deemed gain or loss
1. Overall exchange gain Z and no cumulative taxed gain or loss	X is greater than Z	Gain equal to Z
2. Overall exchange gain Z and a cumulative taxed gain G	(i) Z is not greater than G and X is greater than Z	(i) Loss equal to $G - Z$
	(ii) Z is greater than G and X is greater than Z	(ii) Gain equal to $Z - G$
	(iii) X is not greater than Z nor greater than G	(iii) Loss equal to $G - X$
	(iv) X is not greater than Z but is greater than G	(iv) Gain equal to $X - G$
3. Overall exchange gain Z and a cumulative taxed loss L	(i) X is greater than Z	(i) Gain equal to $Z + L$
	(ii) X is not greater than Z	(ii) Gain equal to $X + L$
4. Overall exchange loss W and no cumulative taxed gain or loss		Loss equal to zero
5. Overall exchange loss W and a cumulative taxed gain G		Loss equal to G
6. Overall exchange loss W and a cumulative taxed loss L		Gain equal to L

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

TABLE D

If there is a post—commencement net loss Y

Primary condition	Secondary condition	Deemed gain or loss
1. Overall exchange loss W and no cumulative taxed gain or loss	Y is greater than W	Loss equal to W
2. Overall exchange loss W and a cumulative taxed loss L	(i) W is not greater than L and Y is greater than W	(i) Gain equal to $L - W$
	(ii) W is greater than L and Y is greater than W	(ii) Loss equal to $W - L$
	(iii) Y is not greater than W nor greater than L	(iii) Gain equal to $L - Y$
	(iv) Y is not greater than W but is greater than L	(iv) Loss equal to $Y - L$
3. Overall exchange loss W and a cumulative taxed gain G	(i) Y is greater than W	(i) Loss equal to $W + G$
	(ii) Y is not greater than W	(ii) Loss equal to $Y + G$
4. Overall exchange gain Z and no cumulative taxed gain or loss		Loss equal to zero
5. Overall exchange gain Z and a cumulative taxed loss L		Gain equal to L
6. Overall exchange gain Z and a cumulative taxed gain G		Loss equal to G

Modification of regulations 18 to 20 where nominal amount of debt increases after commencement

21.—(1) This regulation applies where the existing asset or liability to which this Part applies is the right to settlement of a debt, or a duty to settle a debt, the nominal amount of which is or has been increased on or after the company’s commencement day, and in this regulation “the original debt” means the debt as at the beginning of that day.

(2) Where this regulation applies—

- (a) the calculations required to be made by regulations 18 and 19 shall first be made in relation to the original debt (on the assumption that it had not been increased on or after the company’s commencement day), and there shall be found the amount of any deemed gain or loss under regulation 20(1) basing the computations on the amounts found in accordance with those calculations, and
- (b) there shall then be calculated the amount of the initial exchange gain or loss (if any) which would have accrued as respects the asset or liability if—
 - (i) Parts I to III of these Regulations were disregarded, and
 - (ii) the company had become entitled to the asset or subject to the liability at the beginning of its commencement day, and

(iii) the amount of the debt at the beginning of the company's commencement day had been zero,

and the amount of any such gain or loss is referred to in this regulation as the "notional gain" or the "notional loss", as the case may be.

(3) The amount of the notional gain or loss shall be aggregated with the amount of the deemed gain or loss found, in accordance with paragraph (2)(a) above, under regulation 20(1) and—

- (a) if that aggregate amount is positive it shall be deemed to be the initial exchange gain accruing to the company as respects the asset or liability for the current period;
- (b) if that aggregate amount is negative it shall be deemed to be the initial exchange loss accruing to the company as respects the asset or liability for the current period;
- (c) if that aggregate amount is zero there shall be deemed to be neither an initial exchange gain nor an initial exchange loss accruing to the company as respects the asset or liability for the current period;

and any initial exchange gain or loss which disregarding this Part would accrue to the company as respects the asset or liability for the current period shall (in accordance with regulation 20(1)) be deemed not to accrue.

(4) Where this regulation applies, regulation 20(1) shall have effect (in accordance with paragraph (2) above) with the omission of the words "and shall be an initial exchange gain or loss (as the case may be) accruing in the place of the actual gain or loss".

(5) Where the debt in question is not wholly repaid at one time, then for the purposes of this Part any amount repaid after commencement shall be taken to reduce the amount of the original debt first, before any amount by which that debt has been increased is reduced.

Replacement loans

22.—(1) In any case where—

- (a) a debt to which this Part applies otherwise than by virtue of this regulation ("the original debt") is settled before final settlement of the debt is due, and
- (b) the company owing the original debt incurs another debt ("the new debt") not earlier than 30 days before the day on which the original debt is settled and not later than 30 days after that day,

then, subject to paragraphs (3) to (7) below, regulations 18 to 21 shall continue to apply in relation to the new debt as if it were the original debt (disregarding regulation 17(1)(b)) except that regulation 21 shall not apply in relation to any debt as respects which paragraph (5) below applies.

(2) Any reference in this regulation to the settlement amount is a reference to the amount of the settlement referred to in paragraph (1)(a) above.

(3) For the purposes of this regulation—

- (a) any debt due for goods or services supplied to or by the company in the course of its trade shall be disregarded for the purposes of paragraph (1)(a) and (b) above;
- (b) a debt shall be disregarded for the purposes of paragraph (1)(b) above unless—
 - (i) it is held or owed for the purposes of a trade or part of a trade and is in a currency other than the local currency of the trade or part; or
 - (ii) it is not held for the purposes of a trade or part of a trade and is in a currency other than sterling;
(whether or not it is the same as the currency of the original debt);

and paragraph (1) above shall not apply in relation to any person who is party to the agreement under which the new debt is incurred if he was not party to the agreement under which the original debt was incurred.

(4) In any case where the settlement amount exceeds the amount of the new debt at the time it is incurred, then, for the purposes of computing the amount of any post— commencement net exchange gain or loss and the overall exchange gain or loss for the new debt, the amount of any initial exchange gain or loss and any exchange difference which has accrued as respects the original debt shall be proportionately reduced.

(5) In any case where the amount of the new debt, at the time it is incurred, exceeds the settlement amount, then for any accrual period for the new debt—

- (a) there shall be found the amount of any initial exchange gain or loss which would have accrued as respects the new debt in accordance with this Part if the amount of the new debt at the time it was incurred had been equal to the settlement amount;
- (b) there shall be found the amount of any initial exchange gain or loss which would have accrued as respects the new debt in accordance with Chapter II—
 - (i) if regulations 18 to 21 did not apply, and
 - (ii) the amount of the new debt at the time it was incurred had been equal to the amount by which it exceeds the settlement amount;
- (c) the amounts found in accordance with sub-paragraphs (a) and (b) above shall be aggregated and the aggregate amount so found—
 - (i) if positive shall be the initial exchange gain accruing to the company as respects the new debt for the accrual period in question, and
 - (ii) if negative shall be the initial exchange loss accruing to the company as respects the new debt for the accrual period in question;

and any initial exchange gain or loss which would apart from this paragraph so accrue shall be deemed not to accrue.

(6) In any case where the amount of the new debt, at the time it is incurred, exceeds the settlement amount, then—

- (a) if that debt is partly repaid at any time, the repayment shall be taken into account so as to reduce the amount of the debt first for the purposes of paragraph (5)(b) above and only secondly for the purposes of paragraph (5)(a) above, and
- (b) if that debt is increased at any time, the increase shall be taken into account so as to increase the amount of the debt for the purposes of paragraph (5)(b) above unless the debt has been reduced to an amount less than the settlement amount in which case—
 - (i) the increase shall first increase the amount of the debt for the purposes of paragraph (5)(a) above, but not so as to increase the debt for those purposes beyond the settlement amount, and
 - (ii) if the increase exceeds the amount by which the debt was less than the settlement amount, the amount of that excess shall increase the amount of the debt for the purposes of paragraph (5)(b).

(7) For the purposes of paragraph (8) below “the relevant time” means the time when the terms of the original debt required it to be repaid.

(8) Regulations 18 to 21, and paragraphs (4) to (6) above, shall not apply to the new debt in relation to any time after the relevant time and accordingly, if the new debt has not been wholly repaid by the relevant time, then—

- (a) for the purposes of this Part, and of Chapter II as it applies for the purposes of any calculation required to be made in accordance with any provision of this Part, the company shall be deemed to cease to be entitled or subject to the debt at the relevant time, and
 - (b) for the purposes of Chapter II as it applies otherwise than in accordance with subparagraph (a) above, the company shall be deemed to become entitled or subject to the new debt at the relevant time, to the extent that the new debt has not been repaid at that time.
- (9) This regulation shall also apply, subject to any necessary modifications—
- (a) where part only of the original debt is settled before final settlement of that part is due, and not earlier than 30 days before the day it is settled and not later than 30 days after that day the company owing that debt incurs another debt (so that where this paragraph applies, this Part shall continue to apply to the old debt and to the new debt); and
 - (b) where a debt to which this Part applies by virtue of this regulation is settled (in whole or in part), and not earlier than 30 days before the day on which it is settled and not later than 30 days after that day the company owing that debt incurs another debt.