
STATUTORY INSTRUMENTS

1994 No. 3227

The Exchange Gains and Losses (Alternative Method of Calculation of Gain or Loss) Regulations 1994

Matching

Interpretation

4.—(1) This regulation has effect for the interpretation of regulations 5 to 11.

(2) In those regulations—

“the Taxes Act” means the Income and Corporation Taxes Act 1988(1);

“the 1992 Act” means the Taxation of Chargeable Gains Act 1992(2);

“accounts”, in relation to a company, means the accounts of the company prepared in accordance with normal accountancy practice being either—

(i) the annual accounts of the company prepared in accordance with Part VII of the Companies Act 1985(3), or

(ii) if the company is not required to prepare such accounts, the accounts which it is required to keep under the law of its home State or, if it is not so required to keep accounts, such of its accounts as most closely correspond to accounts which it would have been required to prepare if the provisions of that Part applied to the company;

“a local currency election” means an election under the Local Currency Elections Regulations 1994(4);

“chargeable gain” has the same meaning as it has for the purposes of the 1992 Act;

“a liability” means—

(a) a liability falling within section 153(2)(a) of the 1993 Act, or

(b) in relation to a currency contract held by a company, the duty of the company under that contract to pay in exchange for one currency an amount of a second currency;

and in relation to a currency contract references to initial exchange gains or losses shall be construed as references to initial exchange gains or losses accruing as regards the second currency.

(3) For the purposes of this regulation and regulations 5 to 11, any reference to an asset being matched in part only shall include a reference to any asset matched in accordance with an election under regulation 10(2)(c).

(4) A liability is matched by an asset at any time only to the extent that the value of the liability at that time is matched by the value of the asset at that time and, subject to that, if the election concerned is made under regulation 10(2)(c) so that the asset is matched in part only, the liability shall be taken to be matched only to a corresponding extent.

(1) 1988 c. 1.

(2) 1992 c. 12.

(3) 1985 c. 6.

(4) S.I.1994/3230.

(5) The value of a company's asset or liability at any time shall be taken to be the value attributed to the asset or liability as at that time by the company for the purposes of its accounts for the accounting period which includes that time (expressed in the currency in which those accounts are prepared).

(6) Any reference to the disposal of an asset and to the time of the disposal of an asset shall be construed as a reference to any event which is a disposal for the purposes of the 1992 Act and the time at which the disposal occurs for the purposes of that Act, and for the purposes of the foregoing, any reference to a disposal includes a part disposal.

Gains and losses accruing as regards matched liabilities to be found by the alternative method of calculation

5.—(1) This regulation applies in any case where—

- (a) a liability is owed by a company, and
- (b) the liability is eligible to be matched with an asset on a day which falls within an accrual period for that liability, and
- (c) an election made under regulation 10 is in effect for that day matching the liability (wholly or in part) with an eligible asset held by the company;

and in this regulation “the current period” means that accrual period.

(2) In any case where this regulation applies, then, subject to paragraph (3) below—

- (a) the amount of the initial exchange gain or initial exchange loss which, apart from this regulation, would accrue to the company for the current period as respects the liability shall be found in accordance with the alternative method of calculation, and
- (b) the accrued amount for each day in that period during which the liability and asset are matched shall—
 - (i) if the whole of the liability is matched, be reduced to nil, or
 - (ii) if only a proportion of the liability is matched, be reduced by a corresponding proportion.

(3) If in any case where this regulation applies—

- (a) at any time during the current period there is a major change in the extent to which the liability is matched, and
- (b) there is a significant change in the rate of exchange relevant to the computation of the accrued amounts during the current period, and
- (c) that time is not (disregarding this regulation) a translation time as respects the liability,

then the initial exchange gain or loss as respects the liability for the current period shall be calculated, in accordance with paragraph (2) above, as if that time were a translation time (but not so as to create more than one accrual period) so that separate calculations are made for different parts of the period.

(4) A liability (not being a duty under a currency contract) is eligible to be matched with an asset if—

- (a) the liability does not represent either—
 - (i) a duty to settle under a debt in respect of goods or services supplied to the company in the ordinary course of its trade, or
 - (ii) accrued interest, and
- (b) the nominal currency of the liability is such that borrowing in that currency could reasonably be expected to eliminate or substantially reduce the economic risk of holding the asset which is attributable to fluctuations in exchange rates.

Where the asset is matched in part only, references in this paragraph to the asset are to the part matched.

(5) In the case of a liability which is a duty under a currency contract, the liability is eligible to be matched with an asset if the second currency to which it relates is such that the company could by entering into that contract reasonably expect to eliminate or substantially reduce the economic risk of holding the asset which is attributable to fluctuations in exchange rates.

Where the asset is matched in part only, references in this paragraph to the asset are to the part matched.

- (6) An asset held by a company is an eligible asset at any time if at that time—
- (a) it is shares in a company which is not resident in the United Kingdom, but this sub-paragraph only applies if at the time the election is made the company is an associated company of the company making the election; or
 - (b) it is shares in a company which—
 - (i) is resident in the United Kingdom, and
 - (ii) has made a local currency election and is entitled, by virtue of that election, to have the basic profits and losses of a trade, or part of a trade, which it carries on in the United Kingdom computed in a currency other than sterling, and
 - (iii) is a 90 per cent. subsidiary (within the meaning of paragraph (7) below) of the company making the election; or
 - (c) it is a debt on a security which under the terms of issue can be converted into or exchanged for shares falling within sub-paragraph (a) or (b) above; or
 - (d) it is the company's net investment in a branch outside the United Kingdom through which the company carries on a trade or part of a trade and the company has made a local currency election and is entitled, by virtue of that election, to have the basic profits and losses of that trade or that part computed in a currency other than sterling; or
 - (e) it is a ship or an aircraft.
- (7) For the purposes of paragraph (6) above—
- (a) "shares" includes stock but does not include any asset which is a qualifying asset, and
 - (b) a company is a 90 per cent. subsidiary of another company if it is a 90 per cent. subsidiary of that other within the meaning of section 838 of the Taxes Act or would be if "directly or indirectly" were substituted for "directly" in subsection (1)(c) of that section.
- (8) An asset held by a company is also an eligible asset at any time (whether or not it also falls within any provision of paragraph (6)) if at that time—
- (a) a gain accruing on the disposal of the asset by a person resident in the United Kingdom would be a chargeable gain, and
 - (b) the asset—
 - (i) is not a qualifying asset, and
 - (ii) is held by a branch of the company outside the United Kingdom through which the company carries on a trade or part of a trade and the company is not entitled to have the basic profits and losses of that trade or that part computed in a currency other than sterling by virtue of a local currency election.
- (9) For the purposes of paragraphs (6) and (8) above—
- (a) a company is an associated company of another if that other directly controls 20 per cent. or more of the voting power in the company;

- (b) the net investment of a company in a branch is the value of the assets of that branch less the liabilities of the branch and any other liabilities owed by the company for the purposes of the trade or part trade carried on through the branch.

Controlled foreign companies

6.—(1) Where an accounting period of a controlled foreign company is or includes an accrual period, then, for the purposes of computing in accordance with Schedule 24 to the Taxes Act the company's chargeable profits for that accounting period, an election for matching may be made by a company resident in the United Kingdom which has, or jointly by companies resident in the United Kingdom which together have, a majority interest in the foreign company, notwithstanding that in such a case the company owing any liability or acquiring or holding any asset will not be the company making the election.

(2) Paragraph 4(3) and (4) of that Schedule shall apply for the purposes of determining whether one or more companies has a majority interest in another company and, for that purpose, the relevant accounting period is the accounting period referred to in paragraph (1) above.

Deemed gains and losses on disposal of matched assets

7.—(1) Subject to paragraph (2) below, paragraphs (3) to (8) below apply in any case where there is a disposal of an asset by a company at any time "the disposal time") and at any time before the disposal time it was (to any extent) a matched asset for the purposes of an election for matching made by the company ("the relevant election").

(2) Paragraphs (3) to (8) below do not apply—

- (a) if the asset is re—acquired by the company under a contract made not more than 30 days before or 30 days after the disposal time; or
- (b) if the relevant election specified the company's net investment in a branch as the asset to be matched and the asset disposed of was immediately before the disposal time included in that investment.

(3) There shall be found as respects the liability or liabilities matched with the asset for each accrual period for which the relevant election has had effect—

- (a) the amount of the initial exchange gain (if any) calculated in accordance with the preceding regulations, and
- (b) the amount of the initial exchange gain which would have accrued if the relevant election had not had effect;

and the excess of the amount found under sub-paragraph (b) over that found under sub—paragraph (a), or if no amount is found under sub-paragraph (a) the amount found under sub-paragraph (b), for each period is referred to below as the amount by which the initial exchange gain for the period has been reduced.

(4) There shall be found as respects the liability or liabilities matched with the asset for each accrual period for which the relevant election has had effect—

- (a) the amount of the initial exchange loss (if any) calculated in accordance with the preceding regulations, and
- (b) the amount of the initial exchange loss which would have accrued if the relevant election had not had effect;

and the excess of the amount found under sub-paragraph (b) over that found under sub—paragraph (a), or if no amount is found under sub-paragraph (a) the amount found under sub-paragraph (b), for each period is referred to below as the amount by which the initial exchange loss for the period has been reduced.

- (5) There shall be found—
- (a) the aggregate of the amounts by which the initial exchange gains accruing as respects the liability for accrual periods for which the relevant election has effect have been reduced, and
 - (b) the aggregate of the amounts by which the initial exchange losses accruing as respects the liability for accrual periods for which the relevant election has effect have been reduced.
- (6) Subject to regulation 8 and paragraphs (7) and (8) below—
- (a) if the amount found under paragraph (5)(a) above exceeds the amount found under paragraph (5)(b) above, then for the purposes of the 1992 Act (and in addition to any chargeable gain or allowable loss which accrues otherwise than by virtue of this regulation) a chargeable gain shall be deemed to accrue to the company at the disposal time and the amount of the gain shall be equal to the amount of that excess;
 - (b) if the amount found under paragraph (5)(b) above exceeds the amount found under paragraph (5)(a) above, then for the purposes of the 1992 Act (and in addition to any chargeable gain or allowable loss which accrues otherwise than by virtue of this regulation) an allowable loss shall be deemed to accrue to the company at the disposal time and the amount of the loss shall be equal to the amount of that excess.
- (7) Paragraph (6) above shall not apply if the asset disposed of is a ship or an aircraft, but instead, subject to regulation 8 and paragraph (8) below—
- (a) if the amount found under paragraph (5)(a) above exceeds the amount found under paragraph (5)(b) above, an initial exchange gain, equal to the amount of that excess, shall be deemed to accrue to the company as respects the asset immediately before the disposal time;
 - (b) if the amount found under paragraph (5)(b) above exceeds the amount found under paragraph (5)(a) above, an initial exchange loss, equal to the amount of that excess, shall be deemed to accrue to the company as respects the asset immediately before the disposal time.
- (8) Where there is a part disposal of the asset, the amount of the deemed gain or loss found under paragraph (6) or (7) above shall be reduced proportionately.

Deferral etc. of deemed gains and losses in certain cases

8.—(1) Paragraph (2) below applies in any case where a company (“the disposing company”) disposes of a matched asset to another company and neither a gain nor a loss accrues on that disposal by virtue of section 139(5), 140A(6), 171(7), 215 or 216 of the 1992 Act (“a no gain/no loss disposal”), and references below to the relevant disposal are references to that disposal.

(2) In any case where this paragraph applies, any deemed gain or loss which would (apart from this regulation) be deemed to accrue to the disposing company at the time of the relevant disposal by virtue of paragraph (6) or (7) of regulation 7 (“the deferred gain or loss”) shall not accrue at that time, but paragraph (3) or (4) below (as the case may be) shall apply.

(3) If the deferred gain or loss would have accrued by virtue of regulation 7(6), then for the purposes of the 1992 Act a chargeable gain or allowable loss (as the case may be) equal in amount to the amount of the deferred gain or loss shall be deemed to accrue—

- (a) on the first disposal (after the relevant disposal) of the asset which is not a no gain/no loss disposal,

(5) Section 139 was amended by section 251(5) of the Finance Act 1994.

(6) Section 140A was inserted by section 44 of the Finance (No. 2) Act 1992 (c. 48).

(7) Section 171 was amended by section 251(7)(b) of the Finance Act 1994.

(b) to the company making that disposal.

(4) If the deferred gain or loss would have accrued by virtue of regulation 7(7), then an initial exchange gain or loss (as the case may be) equal in amount to the amount of the deferred gain or loss shall be deemed to accrue—

(a) on the first disposal (after the relevant disposal) of the asset which is not a no gain/no loss disposal,

(b) to the company making that disposal.

(5) In any case where paragraph (3) or (4) above applies on a subsequent disposal which is a part disposal of the asset in question, the amount of any deferred gain or loss shall be apportioned as between the part disposed of and the part retained and the amount of any gain or loss which is deemed to accrue on that part disposal by virtue of paragraph (3) or (4) shall be equal to the amount apportioned to the part disposed of.

(6) Paragraph (7) below applies where a disposal of a matched asset falls within regulation 7(1) and is also part of a transfer to which section 140(8) of the 1992 Act applies (or would apply disregarding this regulation).

(7) In any case where this paragraph applies, any gain or loss which would (apart from this paragraph) be deemed to accrue to the disposing company at the time of that disposal by virtue of paragraph (6) or (7) of regulation 7 (“the deferred gain or loss”) shall not accrue at that time but in computing any chargeable gain or allowable loss accruing as respects the matched asset the amount of the consideration for the transfer of that asset—

(a) if apart from this paragraph there would have been a deferred gain of any amount under regulation 7(6) or (7), shall be increased by an equal amount;

(b) if apart from this paragraph there would have been a deferred loss of any amount under regulation 7(6) or (7), shall be reduced by an equal amount;

and if sub-paragraph (b) applies and the amount of that deferred loss exceeds the amount of the consideration, an allowable loss equal to that excess shall be deemed to accrue as respects the asset on the disposal (in addition to any other loss which may accrue as respects that asset).

Transactions to which section 116 or 127 of the 1992 Act applies

9.—(1) This regulation applies where a transaction occurs to which section 127 of the 1992 Act applies, or would apply but for section 116(9) of that Act and section 116(10) of that Act applies, and as respects which the original shares are or include a matched asset (“the relevant transaction”), and any reference to the original shares and to the new holding shall be construed in accordance with section 126 of that Act.

(2) In any case where this regulation applies there shall be calculated the amount of any chargeable gain or allowable loss which would have been deemed to accrue by virtue of paragraph (6) of regulation 7 if the relevant transaction had been a disposal for the purposes of the 1992 Act as respects which that paragraph applied, and the amount of any such gain or loss is referred to below as the deferred gain or the deferred loss.

(3) If there is a deferred gain, then—

(a) if section 127 applies, in computing the amount of any chargeable gain or allowable loss accruing on a subsequent disposal of the new holding, the consideration received on that disposal of the new holding shall be increased by an amount equal to the amount of the deferred gain;

(8) Section 140 was amended by section 46(4) of the Finance (No. 2) Act 1992.

(9) Section 116 was amended by section 46(3) of the Finance (No. 2) Act 1992.

- (b) if section 116 applies and the amount of a chargeable gain or allowable loss which would have accrued at the time of that transaction falls to be calculated under section 116(10)(a), the market value of the matched asset shall for the purposes of section 116(10)(a) of the 1992 Act be increased by an amount equal to the amount of the deferred gain.
- (4) If there is a deferred loss, then—
- (a) if section 127 applies, in computing the amount of any chargeable gain or allowable loss accruing on a subsequent disposal of the new holding, the consideration received on that disposal of the new holding shall be reduced by an amount equal to the amount of the deferred loss;
 - (b) if section 116 applies and the amount of a chargeable gain or allowable loss which would have accrued at the time of that transaction falls to be calculated under section 116(10)(a), the market value of the asset shall for the purposes of section 116(10)(a) of the 1992 Act be reduced by an amount equal to the amount of the deferred loss,
- and if the amount of the deferred loss exceeds the amount of that consideration or market value, an allowable loss equal in amount to that excess shall be deemed to accrue as respects the new holding at the time of the subsequent disposal.
- (5) In any case where section 127 applies, or would but for section 116 apply, in relation to a transaction involving original shares which are or include an asset as respects which paragraph (2), but not paragraph (3), of regulation 8 has applied, then paragraphs (3) and (4) above shall also apply in relation to that asset and the loss or gain deferred under that regulation.
- (6) In any case where there is a disposal of part of the asset in question and paragraphs (1) to (5) above apply to that disposal, the amount of any deferred gain or loss shall be apportioned as between the part disposed of and the part retained and those paragraphs shall apply (with any necessary modifications) separately in relation to the different parts.

Elections for matching

- 10.**—(1) Subject to the provisions of these Regulations, an election under this regulation—
- (a) may be made by notice given to the inspector by the company which owes the liability to be matched by the election,
 - (b) shall have effect as from the day on which it is made, and
 - (c) shall be irrevocable.
- (2) An election for matching must identify—
- (a) the liability to be matched;
 - (b) the asset to be matched;
 - (c) if the liability is not being matched with the whole of the asset either—
 - (i) a fixed percentage of the asset which is to be available for matching; or
 - (ii) the value of the whole asset as at the time the election is made and a specific amount which is to be available for matching; or
 - (iii) a proportion or part of the asset which is to be available for matching where the value of the proportion or part is to be determined by reference to a formula or other method of calculation specified in the election and may vary from time to time in accordance with that formula or other method of calculation;
 - (d) the reasons why the company considers that regulation 5(4)(b) or (5) (as the case may be) is satisfied as respects the liability;
 - (e) the provision of these Regulations by virtue of which the asset is an eligible asset.

(3) An election under paragraph (2)(c)(i) or (ii) above may be varied by a subsequent election under this regulation so as to increase the percentage or amount which is specified in the election.

(4) An election to match a liability with an asset falling within regulation 5(6)(a), (b), (c) or (d) or 5(8), shall not have effect for any accrual period for which an initial exchange gain accrues as respects the liability unless—

- (a) any exchange difference arising in relation to the asset, and
- (b) at least part of any exchange difference arising in relation to the liability,

are shown, in the company's accounts for the period which is or includes the accrual period in which those differences arise, in the reserves, and if only part of the exchange differences relating to the liability are shown in the reserves, the election shall have effect for that period only to that part.

Where the liability or asset (or both) are matched in part only, references in this paragraph to the liability or asset are to the part matched.

(5) An election shall not cease to have effect at any time by reason only that the liability specified in the election ceased at that time to match the asset to which the election refers either at all or to the same extent to which it matched it at the time the election was made (either by reason of its ceasing to be owed by the company or because it is reduced or its value changes), but where the liability ceases to be owed by the company at any time, then if the company owes any other liability which might have been specified in the election if the election had been made at that time, the election shall continue to have effect in relation to that other liability.

This paragraph shall apply with the necessary modifications in relation to any such other liability as it applies in relation to the liability originally specified in the election.

(6) In any case where the asset to which the election refers was original shares as defined by section 126 of the 1992 Act and by reason of a reorganisation (as so defined) the asset ceased at any time to match the liability specified in the election, then if the whole or any part of the new holding (as so defined) might have been specified in the election if the election had been made at the time of the reorganisation, the election shall not cease to have effect but shall continue to have effect in relation to the new holding or part as the case may be.

(7) Any question as to which liability is matched with which asset shall be determined on a just and reasonable basis.

Effectiveness of elections

11.—(1) An election which does not comply with regulation 10(2) shall be of no effect.

(2) Notwithstanding regulation 10(1) above, if an election—

- (a) specifies as an eligible asset an asset which the company acquired not more than 92 days before the day on which the election is made, and
- (b) specifies the date of acquisition as the date as from which the election is to have effect,

the election shall have effect, so far as it relates to that asset and any liability to be matched with that asset, as from that date.

(3) Notwithstanding regulation 10(1) above, an election under regulation 10(3) may specify a day not more than 92 days earlier than the day on which the election is made as the date as from which the election is to have effect, and in such a case the election shall have effect as from that date.

(4) Notwithstanding regulation 10(1) above, if an election specifies an asset as an eligible asset which the company held on its commencement day and the election is made before the expiry—

- (a) of the period of 183 days beginning with 23rd March 1995, or
- (b) of the period of 92 days beginning with the company's commencement day,

whichever is the later, and the election specifies the company's commencement day as the date as from which the election is to have effect, the election shall have effect, so far as it relates to that asset and any liability to be matched with that asset, as from that specified day.

(5) Notwithstanding regulation 10(1) above, an election expressed to be made under this paragraph and made—

(a) in pursuance of regulation 6 above in relation to a controlled foreign company as respects which a direction under section 747 of the Taxes Act is given on or after 23rd March 1995 for an accounting period of the company, whenever beginning, (and a direction under that section has not been given with respect to an earlier accounting period of that company), and

(b) before the expiry of the period of 92 days beginning with the date of that direction, shall have effect from the latest of the following days, that is to say, the first day of the first accounting period as respects which the direction has effect, the first day of the first accounting period beginning on or after 23rd March 1995, and the day on which the asset in question is acquired by the company.