
STATUTORY INSTRUMENTS

2000 No. 3315

INCOME TAX

**The Exchange Gains and Losses (Miscellaneous
Modifications) Regulations 2000**

Made - - - - *18th December 2000*
Laid before the House of
Commons - - - - *19th December 2000*
Coming into force - - *9th January 2001*

The Treasury, in exercise of the powers conferred upon them by sections 164(14) and 167(1) and (4) to (6) of, and Schedules 15 and 16 to, the Finance Act 1993⁽¹⁾ and section 163 of the Finance Act 1998⁽²⁾, hereby make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Exchange Gains and Losses (Miscellaneous Modifications) Regulations 2000 and shall come into force on 9th January 2001.

(2) Regulations 2 to 10 shall have effect in relation to any accounting period of a company beginning on or after 1st January 2000 for which sections 105 and 106 of the Finance Act 2000 have effect.

Modification of the Exchange Gains and Losses (Transitional Provisions) Regulations 1994

2. Apply the Exchange Gains and Losses (Transitional Provisions) Regulations 1994⁽³⁾ with the modifications set out in regulations 3 to 5.

3.—(1) In regulation 17(1)⁽⁴⁾ for “This Part” substitute “Subject to paragraph (1A) below, this Part”.

(2) After regulation 17(1) insert—
“(1A) In any case where—

(1) 1993 c. 34. Subsections (5A) and (5B) of section 167 were inserted by sections 104 and 105(1) of, and paragraph 74 of Schedule 14 to, the Finance Act 1996 (c. 8). Subsections (5A) and (5B) of section 167 were amended, and subsection (5C) of that section was inserted, by section 106(15) of the Finance Act 2000 (c. 17). Schedule 15 was amended by section 116 of the Finance Act 1994 (c. 9) and section 134(2) of, and paragraph 70 of Schedule 20 to, the Finance Act 1996.

(2) 1998 c. 36.

(3) S.I. 1994/3226, relevantly amended by S.I. 1995/408.

(4) Amended by S.I. 1995/408, regulation 2.

- (a) the debt to which the asset or liability relates is denominated in sterling, and
- (b) a currency other than sterling was not used in making the calculations required by this Part for every accrual period prior to the first for which sections 105 and 106 of the Finance Act 2000 have effect,

the calculations which would otherwise be required by this Part shall not be made for accrual periods for which those sections have effect but instead the exchange gain or loss as respects the asset or liability for each such accrual period shall be calculated as if the asset or liability was first held or owed by the company immediately after its commencement day.”.

- 4. In regulation 18(4) for “a trade or part of a trade” substitute “a business or part of a business”.
- 5. In regulation 22(3) for sub-paragraph (b) substitute—
 - “(b) a debt shall be disregarded for the purposes of paragraph (1)(b) above unless it is held or owed for the purposes of a business or part of a business and is in a currency other than the local currency of the business or part (whether or not it is the same as the currency of the original debt);”.

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

6. Apply the Exchange Gains and Losses (Alternative Method of Calculation of Gain or Loss) Regulations 1994⁽⁵⁾ with the modifications set out in regulations 7 to 9.

- 7. In regulation 4(2)—
 - (a) after the definition of “accounts” insert—
 - ““branch” shall be construed in accordance with section 93(7)(6) of the 1993 Act;”;
 - (b) omit the definition of “a local currency election”;
 - (c) after the definition of “qualifying asset”⁽⁷⁾ add—
 - ““the relevant foreign currency” has the meaning given by section 93(7) of the 1993 Act.”.
- 8.—(1) In regulation 5(6)⁽⁸⁾—
 - (a) after “An asset held by a company” insert “which prepares its accounts as a whole in sterling”;
 - (b) for sub-paragraph (b)(ii) substitute—
 - “(ii) is a company to which section 93 of the 1993 Act applies by virtue of its accounts as a whole being prepared in a currency other than sterling in accordance with normal accounting practice, and”;
 - (c) in sub-paragraph (d) for “in a branch” to “other than sterling” substitute “in a branch through which the company carries on a business or part of a business and, by virtue of section 93 of the 1993 Act, the profits and losses of that business or that part are to be computed and expressed in a currency other than sterling”.
- (2) After regulation 5(6) insert—
 - “(6A) An asset held by a company which prepares its accounts as a whole in a currency other than sterling is an eligible asset at any time if at that time—

⁽⁵⁾ S.I. 1994/3227, amended by S.I. 1996/1347.

⁽⁶⁾ Sections 92 to 94 were substituted for sections 92 to 95 by section 105 of the Finance Act 2000.

⁽⁷⁾ Added by S.I. 1996/1347, regulation 3.

⁽⁸⁾ Regulation 5 was amended by S.I. 1996/1347, regulation 4.

- (a) it is shares which—
 - (i) are denominated in a currency other than the relevant foreign currency for the company making the election, and
 - (ii) are in a company that is not resident in the United Kingdom and is, at the time the election is made, 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) prepares its accounts as a whole either in sterling or in a currency other than sterling which is not the relevant foreign currency for the company making the election, 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 and which is not a qualifying asset; or
 - (d) it is the company’s net investment in a branch through which the company carries on a business or part of a business and, by virtue of section 93 of the 1993 Act, the profits and losses of that business or that part are to be computed and expressed in a currency other than the relevant foreign currency for the company; or
 - (e) it is a ship or an aircraft.”.
- (3) For regulation 5(8)(b) substitute—
- “(b) the asset is not a qualifying asset, and
 - (c) the asset is held by a branch of the company outside the United Kingdom through which the company carries on a business or part of a business, and
 - (i) where the company prepares its accounts as a whole in sterling, the profits and losses of that business or that part are not to be computed and expressed in a currency other than sterling by virtue of section 93 of the 1993 Act, or
 - (ii) where the company prepares its accounts as a whole in a currency other than sterling, the profits and losses of that business or that part are not to be computed and expressed in a currency other than the relevant foreign currency for the company by virtue of that section.”.
- (4) In regulation 5(9)—
- (a) for “(6) and (8)” substitute “(6), (6A) and (8)”;
 - (b) for “trade” in both places where it occurs substitute “business”.
9. In regulation 10(4) after “regulation 5(6)(a), (b), (c) or (d)” insert “or 5(6A)(a), (b), (c) or (d)”.

Revocation of the European Single Currency (Taxes) Regulations 1998

10. Part X of the European Single Currency (Taxes) Regulations 1998(9) is revoked to the extent that it is not previously revoked.

(9) *S.I. 1998/3177*; Part X was made under powers which are no longer contained in sections 93 to 95 of the Finance Act 1993, as those sections are substituted by section 105 of the Finance Act 2000, and under section 163 of the Finance Act 1998.

Modification of the effect of section 146 of the Finance Act 1993

11.—(1) This regulation shall have effect in any case where—

(a) paragraph (2)(b) of regulation 5 of the Exchange Gains and Losses (Alternative Method of Calculation of Gain or Loss) Regulations 1994 applies so as to reduce the amount of an initial exchange gain or initial exchange loss which, apart from that regulation, would accrue to a company as respects a liability, and

(b) section 146(10) of the Finance Act 1993 (“section 146”) applies.

(2) Section 146 shall have effect as if the reduction referred to in paragraph (1)(a) had not been made.

Bob Ainsworth

Clive Betts

Two of the Lords Commissioners of Her
Majesty’s Treasury

18th December 2000

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 105 and 106 of the Finance Act 2000 (c. 17) (use of local currency) (“sections 105 and 106”) provide for new rules as to how companies calculate their profits for tax purposes where they prepare their accounts in a currency other than sterling or prepare their accounts from financial statements kept in such a currency.

Regulations 2 to 9 of these Regulations modify regulations made under Chapter II of Part II of the Finance Act 1993 (c. 34) in consequence of the provisions of sections 105 and 106. The modifications have effect in accordance with section 167(5A)(b) and (5C) of the Finance Act 1993 in relation to any accounting period of a company beginning on or after 1st January 2000 for which sections 105 and 106 have effect. Regulation 11 of these Regulations modifies the effect of section 146 of the Finance Act 1993 (early termination of currency contract) (“section 146”).

Regulation 1 provides for citation, commencement and effect.

Regulations 2 to 5 modify the Exchange Gains and Losses (Transitional Provisions) Regulations 1994 (S.I. 1994/3226) in consequence of sections 105 and 106.

Regulations 6 to 9 modify the Exchange Gains and Losses (Alternative Method of Calculation of Gain or Loss) Regulations 1994 (S.I. 1994/3227) (“the 1994 Regulations”) in consequence of sections 105 and 106. In particular, regulation 8 modifies regulation 5 of the 1994 Regulations so as to provide for what are eligible assets in relation to both companies which prepare their accounts as a whole in sterling and those which prepare them in a currency other than sterling.

Regulation 10 revokes Part X of the European Single Currency (Taxes) Regulations 1998 (S.I. 1998/3177) to the extent that it is not previously revoked.

Regulation 11 modifies the effect of section 146 so that, where regulation 5(2)(b) of the 1994 Regulations applies so as to reduce the amount of an initial exchange gain or initial exchange loss which would accrue to a company for the current period as respects a liability, that section applies as if that reduction had not been made.