

2010 No. 809

CORPORATION TAX

The Exchange Gains and Losses (Bringing into Account Gains or Losses) (Amendment) Regulations 2010

<i>Made</i>	- - - -	<i>15th March 2010</i>
<i>Laid before the House of Commons</i>		<i>16th March 2010</i>
<i>Coming into force</i>	- -	<i>6th April 2010</i>

The Treasury make the following Regulations in exercise of the powers conferred by section 151E of the Taxation of Chargeable Gains Act 1992(a), paragraph 26(5) of Schedule 23 to the Finance Act 2002(b) and sections 328(5) to (7) and 606(5) to (7) of the Corporation Tax Act 2009(c).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Exchange Gains and Losses (Bringing into Account Gains or Losses) (Amendment) Regulations 2010 and shall come into force on 6th April 2010.

(2) Subject to regulations 13 and 14(4), these Regulations shall have effect in relation to a disposal of an asset made on or after 6th April 2010.

(3) In these Regulations, “the principal Regulations” means the Exchange Gains and Losses (Bringing into Account Gains or Losses) Regulations 2002(d).

Amendments to the Exchange Gains and Losses (Bringing into Account Gains or Losses) Regulations 2002

2. The principal Regulations are amended in accordance with regulations 3 to 12.

Amendment of regulation 2

3.—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1) for the definition of “a no gain/no loss disposal” substitute—

““a no gain/no loss disposal” means a disposal on which, by virtue of any of the no gain/no loss provisions (within the meaning of section 288(3A) of the 1992 Act(e)), neither a gain nor a loss accrues;”.

(a) 1992 c. 12; section 151E was inserted by paragraph 370 of Schedule 1 to the Corporation Tax Act 2009 (c. 4).
(b) 2002 c. 23; paragraph 26(5) of Schedule 23 was amended by paragraph 541(3)(b) of Schedule 1 to the Corporation Tax Act 2009.
(c) 2009 c. 4.
(d) S.I. 2002/1970 (referred to in these footnotes as the “principal Regulations”); amended by S.I. 2004/3259 and 2005/2013.
(e) “The 1992 Act” is defined in the principal Regulations as meaning the Taxation of Chargeable Gains Act 1992; section 288(3A) was inserted by paragraph 6 of Schedule 2 to the Finance Act 2008 (c. 8) and amended by S.I. 2008/3002.

(3) After paragraph (1) insert—

“(1A) For the purposes of these Regulations a relevant transaction to which section 116(10) of the 1992 Act applies shall be treated as a disposal.”.

(4) After paragraph (2) insert—

“(2A) In these Regulations any reference to the amount or value of the consideration for the disposal of the asset is a reference to any amount treated as disposal consideration by any provision of the 1992 Act.”.

Substitution of regulation 4

4. For regulation 4, substitute—

“General rule for bringing amounts into account

4.—(1) For the purposes of the 1992 Act, the amount or value of the consideration for the disposal of the asset shall be—

- (a) increased by the amount of any net gain, and
- (b) subject to paragraph (2) below, reduced by the amount of any net loss.

This is subject to paragraph (4) below and regulations 6 and 8.

(2) If the amount of any net loss exceeds the amount or value of the consideration that would be brought into account but for the application of this regulation, the amount of the excess of the net loss shall be treated as consideration for the acquisition of the asset for the purposes of section 38(1)(a) of the 1992 Act.

(3) If section 42 of the 1992 Act applies, this regulation shall not apply to determine the amount or value of the consideration for the disposal referred to as “A” in that section in apportioning the sums attributable to the asset.

(4) Paragraph (1) above does not apply if, immediately before the disposal, the asset is a foreign business asset other than shares not held on trading account.”.

Amendment of regulation 5

5.—(1) Regulation 5 (calculation of the amount of any net gain or net loss for the purposes of regulation 4) is amended as follows.

- (2) In paragraph (2) omit “Subject to paragraph (4) below,”.
- (3) Omit paragraph (4).

Amendment of regulation 6

6. In regulation 6 (assets representing certain loan relationships and ships or aircraft) for paragraph (2) substitute—

“(2) Where paragraph (1) above applies, the amount of any net gain or net loss referred to in regulation 4 shall not be brought into account under that regulation but instead, for the purposes of Part 5 of the Corporation Tax Act 2009, shall be brought into account for the accounting period in which the disposal of the asset occurs as a credit or a debit (according to whether it is an amount of net gain or net loss) in respect of the loan relationships of the company.”.

Amendment of regulation 7

7. In regulation 7(3) (regulations 5 and 6 – supplementary) after “the 1994 Regulations” insert “and these Regulations”.

Amendment of regulation 8

8.—(1) Regulation 8 (no gain/no loss disposals) is amended as follows.

(2) For paragraph (2) substitute—

“(2) Where this regulation applies, regulation 4 shall not apply to bring into account the net gain or net loss on the occasion of the no gain/no loss disposal but shall instead apply to bring that net gain or net loss into account on the first relevant disposal of the asset.”.

(3) In paragraph (3) omit “(b)”.

Omission of regulation 9

9. Omit regulation 9 (cases where there is no disposal of the asset by virtue of section 116(10) of the 1992 Act).

Omission of regulation 10

10. Omit regulation 10 (cases where, but for section 116, section 127 of the 1992 Act would apply in relation to assets as regards which paragraph (2)(a), but not paragraph (2)(b), of regulation 8 has had effect).

Omission of regulation 11

11. Omit regulation 11 (cases where there is no disposal of the asset by virtue of section 127 of the 1992 Act).

Omission of regulation 12

12. Omit regulation 12 (cases where section 127 of the 1992 Act applies in relation to assets as regards which paragraph (2)(a), but not paragraph (2)(b), of regulation 8 has had effect).

Further provisions – cases within regulation 3(3)(a) or (b) of the principal Regulations

13. These Regulations shall not have effect in relation to a disposal of an asset where the circumstances prescribed by regulation 3(3)(a) or (b) of the principal Regulations are satisfied.

Further provisions – no gain/no loss disposals

14.—(1) This regulation applies in relation to an asset as regards which regulation 8(2)(a) of the principal Regulations has had effect in respect of a no gain/no loss disposal before 6th April 2010 but the net gain or net loss accruing at the time of that disposal has not been brought into account as a chargeable gain or allowable loss in accordance with regulation 8(2)(b), 10(3) or 12(3).

This is subject to paragraph (4).

(2) On the first disposal of the asset which is not a no gain/no loss disposal, the net gain or net loss referred to in paragraph (1) shall be brought into account in accordance with regulation 4 of the principal Regulations (as substituted by regulation 4 of these Regulations).

(3) In paragraph (2) “a no gain/no loss disposal” has the meaning given in regulation 2(1) of the principal Regulations (as substituted by regulation 3(2) of these Regulations).

(4) In a case to which this regulation applies, the company making the disposal of the asset may elect that these Regulations shall not apply.

(5) An election under paragraph (4) must—

(a) be made in writing to HMRC within 12 months of the date of the disposal referred to in paragraph (2),

(b) identify the asset which is the subject of the disposal,

(c) include a computation of the net gain or net loss, and

(6) An election under paragraph 4 above is irrevocable.

Tony Cunningham
Dave Watts

15th March 2010

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Exchange Gains and Losses (Bringing into Account Gains or Losses) Regulations 2002, S.I. 2002/1970 (“the principal Regulations”). The principal Regulations provide for exchange gains or losses on loans or derivatives which hedge foreign exchange risk from a company’s investment in a foreign enterprise, and which have previously been disregarded for corporation tax purposes, to be brought back into account in specified circumstances. These amendments change the way in which this is achieved. The purpose of doing so is to eliminate anomalies in the interaction between the principal Regulations and the Taxation of Chargeable Gain Act 1992 (“the 1992 Act”).

Regulation 1 provides for citation, commencement and effect and regulation 2 for interpretation.

Regulation 3 amends regulation 2 (interpretation) of the principal Regulations by substituting the definition of “a no gain/no loss disposal” and making other amendments to ensure that the Regulations take account of relevant provisions of the 1992 Act.

Regulation 4 contains the main amendment to the principal Regulations by substituting a new regulation 4. The substituted regulation 4 provides a new rule for bringing amounts into account by providing that on disposal of a matched asset, the disposal consideration is increased by the amount of any net gain, or decreased by the amount of any net loss (the definition of “net loss” and “net gain” are provided by regulation 5 of the principal Regulations).

Regulation 5 omits regulation 5(4) of the principal Regulations which is no longer required because of substituted regulation 4.

Regulation 6 amends regulation 6 of the principal Regulations so as to ensure that it operates correctly having regard to substituted regulation 4.

Regulation 7 makes a minor amendment to regulation 7 of the principal Regulations.

Regulation 8 amends regulation 8 of the principal Regulations so as to ensure that it operates correctly having regard to the substituted regulation 4.

Regulations 9, 10, 11 and 12 omit respectively regulations 9, 10, 11 and 12 of the principal Regulations so as to take account of the amendments made by these Regulations, in particular the amendment of regulation 8 of the principal Regulations.

Regulation 13 provides that these Regulations do not have effect in relation to the disposal of an asset where the circumstances prescribed by regulation 3(3)(a) or (b) of the principal Regulations are satisfied.

Regulation 14 makes special provision in relation to an asset as regards which regulation 8(2)(a) of the principal Regulations has had effect in respect of a no gain/ no loss disposal before [date] but the net gain or net loss accruing at the time of that disposal has not been brought into account as a chargeable gain or allowable loss in accordance with regulations 8(2)(b), 10(3) or 12(3) of the principal Regulations. Regulation 14 provides that the company making the disposal may elect that these Regulations do not apply.

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

© Crown copyright 2010

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2010 No. 809

CORPORATION TAX

The Exchange Gains and Losses (Bringing into Account Gains
or Losses) (Amendment) Regulations 2010

£4.00