



Finance Act 1993

1993 CHAPTER 34

PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER II

EXCHANGE GAINS AND LOSSES

Non-trading gains and losses

129 Non-trading gains and losses: general

- (1) In a case where—
 - (a) as regards an asset, liability or contract an initial exchange gain accrues to a qualifying company for an accrual period, and
 - (b) the whole or part of the gain is not an exchange gain of a trade or part of a trade for the period,the whole or part (as the case may be) is a non-trading exchange gain for the period.
- (2) The company shall be treated as—
 - (a) receiving in respect of the asset, liability or contract an amount equal to the non-trading exchange gain for the accrual period, and
 - (b) receiving the amount in the accounting period which constitutes the accrual period or in which the accrual period falls;and (subject to subsection (6) below) the rules in sections 130 to 133 below shall apply.
- (3) In a case where—
 - (a) as regards an asset, liability or contract an initial exchange loss accrues to a qualifying company for an accrual period, and
 - (b) the whole or part of the loss is not an exchange loss of a trade or part of a trade for the period,

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the whole or part (as the case may be) is a non-trading exchange loss for the period.

- (4) The company shall be treated as—
- (a) incurring in respect of the asset, liability or contract a loss of an amount equal to the non-trading exchange loss for the accrual period, and
 - (b) incurring the loss in the accounting period which constitutes the accrual period or in which the accrual period falls;
- and (subject to subsection (6) below) the rules in sections 130 to 133 below shall apply.
- (5) For the purposes of subsection (6) below and sections 130 to 133 below, in relation to an accounting period—
- (a) amount A is the amount a company is treated as receiving in the accounting period by virtue of this section or (if it is treated as so receiving two or more amounts) the aggregate of those amounts;
 - (b) amount B is the amount of the loss a company is treated as incurring in the accounting period by virtue of this section or (if it is treated as so incurring two or more losses) the aggregate of the amounts of those losses.
- (6) In a case where—
- (a) a company is treated as receiving in an accounting period an amount or amounts by virtue of this section,
 - (b) it is treated as incurring in the accounting period a loss or losses by virtue of this section, and
 - (c) amount A is equal to amount B,
- the rules in sections 130 to 133 below shall not apply.
- (7) In a case where—
- (a) a non-trading exchange gain or loss would (apart from this subsection) accrue as regards an asset consisting of a right to settlement under a qualifying debt, and
 - (b) the right is a right to receive income (whether interest, dividend or otherwise),
- the non-trading exchange gain or loss shall be treated as not accruing.
- (8) In a case where—
- (a) a non-trading exchange gain or loss would (apart from this subsection) accrue to a company as regards a liability consisting of a duty to settle under a qualifying debt, and
 - (b) a charge is allowed to the company in respect of the debt under section 338 of the Taxes Act 1988 (allowance of charges on income and capital) or the circumstances are such that a charge would be so allowed if the duty were settled,
- the non-trading exchange gain or loss shall be treated as not accruing.
- (9) Section 396 of the Taxes Act 1988 (Case VI losses) shall not be taken to apply to a loss which a company is treated as incurring by virtue of this section; and an amount which a company is treated as receiving by virtue of this section shall not be regarded, for the purposes of subsection (1) of section 396, as income arising as mentioned in that subsection.

130 Non-trading gains and losses: charge to tax

- (1) Subsection (2) below applies where—

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- (a) a company is treated as receiving in an accounting period an amount or amounts by virtue of section 129 above, and
 - (b) it is not treated as incurring in the accounting period any loss by virtue of that section.
- (2) The company shall be treated as receiving in the accounting period annual profits or gains of an amount equal to amount A, and the profits or gains shall be chargeable to tax under Case VI of Schedule D for the accounting period.
- (3) Subsection (4) below applies where—
- (a) a company is treated as receiving in an accounting period an amount or amounts by virtue of section 129 above,
 - (b) it is treated as incurring in the accounting period a loss or losses by virtue of that section, and
 - (c) amount A exceeds amount B.
- (4) The company shall be treated as receiving in the accounting period annual profits or gains of an amount equal to amount A minus amount B, and the profits or gains shall be chargeable to tax under Case VI of Schedule D for the accounting period.

131 Non-trading gains and losses: relief

- (1) This section applies where—
- (a) a company is treated as incurring in an accounting period a loss or losses by virtue of section 129 above, and
 - (b) it is not treated as receiving in the accounting period any amount by virtue of that section;
- and where this section applies by virtue of this subsection references to the relievable amount for the accounting period are to an amount equal to amount B.
- (2) This section also applies where—
- (a) a company is treated as incurring in an accounting period a loss or losses by virtue of section 129 above,
 - (b) it is treated as receiving in the accounting period an amount or amounts by virtue of that section, and
 - (c) amount B exceeds amount A;
- and where this section applies by virtue of this subsection references to the relievable amount for the accounting period are to an amount equal to amount B minus amount A.
- (3) The company may claim under this subsection that the whole or part of the relievable amount for an accounting period shall be treated for the purposes of section 403(1) of the Taxes Act 1988 (group relief) as if it were a loss incurred by the company in the period in carrying on a trade, and in such a case section 403(2) (exclusions) shall not apply.
- (4) The company may claim under this subsection that the whole or part of the relievable amount for an accounting period shall be set off for the purposes of corporation tax against profits (of whatever description) of that accounting period; and in such a case, subject to any relief for a loss incurred in a trade in an earlier accounting period, those profits shall then be treated as reduced accordingly.

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- (5) Where a company has made no claim under subsection (3) or (4) above as regards the relievable amount for an accounting period, the company may claim under this subsection that—
- (a) the whole of the relievable amount, or
 - (b) where the relievable amount exceeds the relevant exchange profits, so much of the relievable amount as is equal to those profits,
- shall be treated as mentioned in subsection (7) below.
- (6) Where a company has made a claim under subsection (3) or (4) above as regards the relievable amount for an accounting period, the company may claim under this subsection that—
- (a) such part of the relievable amount as is not the subject of any such claim, or
 - (b) where that part exceeds the relevant exchange profits, so much of that part as is equal to those profits,
- shall be treated as mentioned in subsection (7) below.
- (7) Where a company claims under subsection (5) or (6) above as regards the whole or part of the relievable amount for an accounting period, the whole or part concerned shall be set off for the purposes of corporation tax against the exchange profits of preceding accounting periods falling wholly or partly within the permitted period; and (subject to any relief for an earlier loss) the exchange profits of any of those accounting periods shall then be treated as reduced by the whole or part concerned or by so much of it as cannot be set off under this subsection against the exchange profits of a later accounting period.
- (8) For the purposes of subsections (5) and (6) above “the relevant exchange profits” means the total of the following—
- (a) the exchange profits, as reduced by any reliefs for earlier losses and any reliefs falling within subsection (9) below, of all those accounting periods falling wholly within the permitted period, and
 - (b) such part of the exchange profits, as so reduced, of any accounting period falling partly before the beginning of the permitted period as is proportionate to the part of the accounting period falling within the permitted period.
- (9) The reliefs falling within this subsection are—
- (a) any relief under section 338 of the Taxes Act 1988 (charges on income) in respect of payments made wholly and exclusively for the purposes of a trade;
 - (b) where the company is an investment company for the purposes of Part IV of the Taxes Act 1988, any relief under that section in respect of payments made wholly and exclusively for the purposes of its business.
- (10) For the purposes of subsections (7) and (8) above—
- (a) the exchange profits of an accounting period are the annual profits or gains the company is treated as receiving in that period under section 130 above,
 - (b) the permitted period is the period of three years immediately preceding the accounting period first mentioned in subsection (7) above, and
 - (c) an earlier loss is a loss incurred, or treated as incurred, in an accounting period earlier than that first mentioned in subsection (7) above.
- (11) The amount of the reduction that may be made under subsection (7) above in the exchange profits of an accounting period falling partly before the beginning of the

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permitted period shall not exceed a part of those profits proportionate to the part of the accounting period falling within the permitted period.

- (12) If the whole or part of the relievable amount for an accounting period is not dealt with under a claim under this section—
- (a) the company shall be treated as incurring by virtue of section 129 above a loss of an amount equal to the whole or part (as the case may be),
 - (b) the company shall be treated as incurring the loss in the next succeeding accounting period, and
 - (c) in relation to that accounting period references to amount B shall be construed accordingly.
- (13) A company—
- (a) may not claim under more than one of subsections (3) and (4) above as regards the same part of a relievable amount, and
 - (b) where it has claimed under subsection (5)(b) or (6) above as regards part of a relievable amount, may not later claim under subsection (3) or (4) above as regards any part of the relievable amount.
- (14) A claim under any of subsections (3) to (6) above must be made within the period of two years immediately following the accounting period to which the relievable amount relates or within such further period as the Board may allow.

132 Modifications where loss carried forward

- (1) This section applies where section 131(12) above treats a company as incurring a loss in an accounting period by virtue of section 129 above.
- (2) In this section references to amount C are to so much of amount B as the company is treated as incurring in the accounting period otherwise than by virtue of section 131(12).
- (3) Where section 131 above applies by virtue of section 131(1) and this section applies, then, as regards the accounting period—
- (a) if amount C is nil section 131(3) to (6) shall not apply;
 - (b) if amount C exceeds nil the references to the relievable amount in section 131(3) to (7), (13) and (14) shall be construed as references to so much of that amount as equals amount C.
- (4) Where section 131 above applies by virtue of section 131(2) and this section applies, then, as regards the accounting period—
- (a) if amount C does not exceed amount A section 131(3) to (6) shall not apply;
 - (b) if amount C exceeds amount A the references to the relievable amount in section 131(3) to (7), (13) and (14) shall be construed as references to so much of that amount as equals amount C minus amount A.

133 Interaction with ICTA

- (1) Section 131(4) above shall apply before section 393A(1) of the Taxes Act 1988 in relation to profits of the accounting period first mentioned in section 131(4) above.

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- (2) Relief shall not be given under section 131(4) above against any ring fence profits of the company; and in this subsection “ring fence profits” has the same meaning as in Chapter V of Part XII of the Taxes Act 1988.
- (3) Where the company incurs a loss in a trade in the accounting period first mentioned in subsection (7) of section 131 above, that subsection shall apply after section 393A(1) of the Taxes Act 1988 in relation to exchange profits of a particular accounting period.
- (4) Relief shall not be given by virtue of section 131(7) above so as to interfere with—
 - (a) any relief under section 338 of the Taxes Act 1988 (charges on income) in respect of payments made wholly and exclusively for the purposes of a trade, or
 - (b) where the company is an investment company for the purposes of Part IV of the Taxes Act 1988, any relief under that section in respect of payments made wholly and exclusively for the purposes of its business.
- (5) The reference in subsection (3) above to exchange profits of an accounting period shall be construed in accordance with section 131(10) above.