



# Finance Act 1993

## 1993 CHAPTER 34

### PART II

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER II

#### EXCHANGE GAINS AND LOSSES

##### *Accrual of gains and losses*

#### **125 Accrual on qualifying assets and liabilities**

- (1) Subsection (2) below applies where a qualifying company holds a qualifying asset and there is a difference between—
  - (a) the local currency equivalent, at the translation time with which an accrual period as regards the asset begins, of the basic valuation of the asset, and
  - (b) the local currency equivalent, at the translation time with which the accrual period ends, of the basic valuation of the asset.
- (2) There is as regards the asset an exchange difference for the accrual period, and—
  - (a) if the difference represents an increase over the period, an initial exchange gain of an amount equal to the difference accrues to the company as regards the asset for the period;
  - (b) if the difference represents a decrease over the period, an initial exchange loss of an amount equal to the difference accrues to the company as regards the asset for the period.
- (3) Subsection (4) below applies where a qualifying company owes a qualifying liability and there is a difference between—
  - (a) the local currency equivalent, at the translation time with which an accrual period as regards the liability begins, of the basic valuation of the liability, and

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- (b) the local currency equivalent, at the translation time with which the accrual period ends, of the basic valuation of the liability.
- (4) There is as regards the liability an exchange difference for the accrual period, and—
- (a) if the difference represents a decrease over the period, an initial exchange gain of an amount equal to the difference accrues to the company as regards the liability for the period;
  - (b) if the difference represents an increase over the period, an initial exchange loss of an amount equal to the difference accrues to the company as regards the liability for the period.

## **126 Accrual on currency contracts**

- (1) This section applies where a qualifying company enters into a contract (a currency contract) under which—
- (a) it becomes entitled to a right and subject to a duty to receive payment at a specified time of a specified amount of one currency (the first currency), and
  - (b) it becomes entitled to a right and subject to a duty to pay in exchange and at the same time a specified amount of another currency (the second currency).
- (2) Subsection (3) below applies if there is a difference between—
- (a) the local currency equivalent, at the translation time with which an accrual period as regards the contract begins, of the amount of the first currency, and
  - (b) the local currency equivalent, at the translation time with which the accrual period ends, of the amount of the first currency.
- (3) There is as regards the contract an exchange difference for the accrual period, and—
- (a) if the difference represents an increase over the period, an initial exchange gain of an amount equal to the difference accrues to the company as regards the contract for the period;
  - (b) if the difference represents a decrease over the period, an initial exchange loss of an amount equal to the difference accrues to the company as regards the contract for the period.
- (4) Subsection (5) below applies if there is a difference between—
- (a) the local currency equivalent, at the translation time with which an accrual period as regards the contract begins, of the amount of the second currency, and
  - (b) the local currency equivalent, at the translation time with which the accrual period ends, of the amount of the second currency.
- (5) There is as regards the contract an exchange difference for the accrual period, and—
- (a) if the difference represents a decrease over the period, an initial exchange gain of an amount equal to the difference accrues to the company as regards the contract for the period;
  - (b) if the difference represents an increase over the period, an initial exchange loss of an amount equal to the difference accrues to the company as regards the contract for the period.

## **127 Accrual on debts whose amounts vary**

- (1) In a case where—

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- (a) a qualifying company holds an asset consisting of a right to settlement under a qualifying debt or owes a liability consisting of a duty to settle under such a debt, and
- (b) the nominal amount of the debt outstanding varies during an accrual period (whether because of an increase or a decrease or both),

the following provisions of this section shall apply for the period and section 125 above shall not.

(2) In such a case—

- (a) take the local currency equivalent, at the translation time with which the accrual period begins, of the nominal amount of the debt then outstanding;
- (b) take the local currency equivalent, at each time (if any) immediately after the nominal amount of the debt outstanding increases in the accrual period, of the amount by which it then increases;
- (c) take the local currency equivalent, at each time (if any) immediately after the nominal amount of the debt outstanding decreases in the accrual period, of the amount by which it then decreases;
- (d) take the figure found under paragraph (a) above, add each figure found under paragraph (b) above, subtract each figure found under paragraph (c) above, and call the resulting figure the first amount;
- (e) take the local currency equivalent, at the translation time with which the accrual period ends, of the nominal amount of the debt then outstanding, and call the figure so found the second amount.

(3) Where the qualifying company has a right to settlement under the debt the following provisions apply in relation to the asset consisting of the right—

- (a) if the second amount exceeds the first an initial exchange gain of an amount equal to the difference between them accrues to the company as regards the asset for the accrual period;
- (b) if the second amount is less than the first an initial exchange loss of an amount equal to the difference between them accrues to the company as regards the asset for the accrual period.

(4) Where the qualifying company has a duty to settle under the debt the following provisions apply in relation to the liability consisting of the duty—

- (a) if the second amount is less than the first an initial exchange gain of an amount equal to the difference between them accrues to the company as regards the liability for the accrual period;
- (b) if the second amount exceeds the first an initial exchange loss of an amount equal to the difference between them accrues to the company as regards the liability for the accrual period.

(5) If the first amount has a negative value, for the purposes of this section the second amount (however small its value) shall be taken to exceed the first amount (however large its value).

(6) Subsection (7) below modifies the preceding provisions of this section in their application to an asset or liability where there is a difference between—

- (a) the basic valuation of the asset or liability, and
- (b) the nominal amount of the debt outstanding at the translation time with which the accrual period begins.

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- (7) In such a case—
- (a) the reference in subsection (2)(a) above to the nominal amount of the debt outstanding shall be taken to be a reference to the basic valuation of the asset or liability;
  - (b) the reference in subsection (2)(c) above to the amount by which the nominal amount of the debt outstanding decreases shall be taken to be a reference to the amount found under subsection (8) below;
  - (c) the reference in subsection (2)(e) above to the nominal amount of the debt outstanding shall be taken to be a reference to the amount found under subsection (10) below.

- (8) The amount referred to in subsection (7)(b) above is the amount given by the formula—

$$A \times \frac{B}{C}$$

- (9) For the purposes of subsection (8) above—
- A is the basic valuation of the asset or liability;
  - B is the amount by which, at the time of the decrease mentioned in subsection (2)(c) above, the nominal amount of the debt outstanding then decreases;
  - C is the nominal amount of the debt outstanding at the translation time with which the accrual period begins.

- (10) The amount referred to in subsection (7)(c) above is the amount given by the formula—

$$D + E - F$$

- (11) For the purposes of subsection (10) above—
- D is the basic valuation of the asset or liability;
  - E is the amount (if any) by which the nominal amount of the debt outstanding has at any time increased in the accrual period or, if it has increased more than once, the aggregate of such amounts;
  - F is the amount (if any) found under subsection (8) above or, if the nominal amount of the debt outstanding has decreased more than once in the accrual period, the aggregate of the amounts so found.

*Trading gains and losses*

**128 Trading gains and losses**

- (1) Subsections (2) to (4) below apply where—
- (a) as regards an asset, liability or contract an initial exchange gain accrues to a qualifying company for an accrual period, and
  - (b) at any time in the period the asset or contract was held, or the liability was owed, by the company for the purposes of a trade or part of a trade carried on by it.

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- (2) If throughout the accrual period the asset or contract was held, or the liability was owed, by the company solely for the purposes of the trade or part the whole of the gain is an exchange gain of the trade or part for the period.
- (3) In any other case the gain shall be apportioned on a just and reasonable basis and so much as is attributable to the trade or part is an exchange gain of the trade or part for the period.
- (4) The company shall be treated for the purposes of the Tax Acts as—
  - (a) receiving in respect of the trade or part an amount equal to the exchange gain of the trade or part for the accrual period, and
  - (b) receiving the amount in respect of the accounting period which constitutes the accrual period or in which the accrual period falls.
- (5) Subsections (6) to (8) below apply where—
  - (a) as regards an asset, liability or contract an initial exchange loss accrues to a qualifying company for an accrual period, and
  - (b) at any time in the period the asset or contract was held, or the liability was owed, by the company for the purposes of a trade or part of a trade carried on by it.
- (6) If throughout the accrual period the asset or contract was held, or the liability was owed, by the company solely for the purposes of the trade or part the whole of the loss is an exchange loss of the trade or part for the period.
- (7) In any other case the loss shall be apportioned on a just and reasonable basis and so much as is attributable to the trade or part is an exchange loss of the trade or part for the period.
- (8) The company shall be treated for the purposes of the Tax Acts as—
  - (a) incurring in the trade or part a loss of an amount equal to the exchange loss of the trade or part for the accrual period, and
  - (b) incurring the loss in respect of the accounting period which constitutes the accrual period or in which the accrual period falls.
- (9) For the purposes of this section a part of a trade is any part of a trade whose basic profits or losses for the relevant accounting period are by virtue of regulations under section 94 above to be computed and expressed in a particular currency for the purposes of corporation tax; and the relevant accounting period is the accounting period which constitutes the accrual period concerned or in which that accrual period falls.
- (10) The preceding provisions of this section apply—
  - (a) whether the asset or contract is at any time held, or the liability is at any time owed, on revenue account or capital account, and
  - (b) notwithstanding anything in section 74 of the Taxes Act 1988 (general rules as to deductions not allowable).
- (11) In a case where—
  - (a) an accounting period of a qualifying company begins on or after its commencement day, and

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(b) but for this subsection, a gain or loss falling within subsection (12) below would be taken into account in calculating for the purposes of corporation tax the profits or losses for the period of a trade carried on by the company, the gain or loss shall be left out of account in calculating the profits or losses.

(12) A gain or loss falls within this subsection if it—

- (a) accrues to the company, otherwise than by virtue of this Chapter, as regards a qualifying asset or liability or a currency contract, and
  - (b) is attributable to fluctuations in currency exchange rates;
- and it is immaterial whether the gain or loss is realised.

### *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,

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;

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- (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—
- (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

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(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.

(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.



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- (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 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

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- (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.
- (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.

*Alternative calculation*

**134 Alternative calculation**

Schedule 15 to this Act (which provides for the amount of an initial exchange gain or loss to be found in accordance with an alternative method of calculation in certain cases) shall have effect.

*Main benefit test*

**135 Loss disregarded if the main benefit**

- (1) In a case where—
- (a) an exchange loss would (apart from this section) accrue to a company for an accrual period,
  - (b) the loss would accrue as regards an asset or liability falling within section 153(1)(a) or (2)(a) below,
  - (c) the nominal currency of the asset or liability is such that the main benefit or one of the main benefits that might be expected to arise from the company's holding the asset or owing the liability is the accrual of the loss, and
  - (d) the Board direct that this subsection shall apply,
- the loss shall be treated as not accruing.
- (2) References in subsection (1) above to an exchange loss are to an exchange loss of a trade or an exchange loss of part of a trade or a non-trading exchange loss.

*Arm's length test*

**136 Arm's length test: assets and liabilities**

- (1) Subject to the following provisions of this section, subsection (2) below applies where—
- (a) a qualifying company becomes entitled to a qualifying asset falling within section 153(1)(a) below or subject to a qualifying liability falling within section 153(2)(a) below,
  - (b) the transaction as a result of which the company becomes entitled or subject to the asset or liability would not have been entered into at all if the parties to the transaction had been dealing at arm's length, or the transaction's terms would have been different if they had been so dealing,
  - (c) as regards the asset or liability an exchange loss accrues to the company for an accrual period (or would so accrue apart from this section), and
  - (d) the Board direct that subsection (2) below shall apply;
- and any reference in this section to an exchange loss is to an exchange loss of a trade or an exchange loss of part of a trade or a non-trading exchange loss.
- (2) The exchange loss shall be treated as not accruing to the company for the accrual period.
- (3) Where subsection (2) above applies and the accrual period is not the last to occur as regards the asset or liability while it is held or owed by the company—

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- (a) an amount equal to the amount of the loss shall be set off against appropriate exchange gains accruing to the company as regards the asset or liability for subsequent accrual periods, and
- (b) any such gain shall then be treated as reduced by that amount or by so much of it as cannot be set off under this subsection against any such gain accruing for an earlier accrual period;

and an appropriate exchange gain is an exchange gain of the trade concerned (if the exchange loss is an exchange loss of a trade) or an exchange gain of the part of the trade concerned (if the exchange loss is an exchange loss of part of a trade) or a non-trading exchange gain (if the exchange loss is a non-trading exchange loss).

- (4) Subsection (5) below applies where the circumstances are such that, had the parties to the transaction been dealing at arm's length, its terms would have been the same except that the amount of the debt would have been an amount (the adjusted amount) greater than nil but less than its actual amount.

- (5) In such a case—

- (a) subsection (2) above shall not apply, and
- (b) the exchange loss accruing to the company for the accrual period shall be treated as reduced to the amount it would have been if the amount of the debt had been the adjusted amount;

but paragraph (b) above shall only apply if the Board so direct.

- (6) Where subsection (5)(b) above applies and the accrual period is not the last to occur as regards the asset or liability while it is held or owed by the company—

- (a) an amount equal to the amount by which the loss is treated as reduced shall be set off against appropriate exchange gains accruing to the company as regards the asset or liability for subsequent accrual periods, and
- (b) any such gain shall then be treated as reduced by that amount or by so much of it as cannot be set off under this subsection against any such gain accruing for an earlier accrual period;

and an appropriate exchange gain is an exchange gain of the trade concerned (if the exchange loss is an exchange loss of a trade) or an exchange gain of the part of the trade concerned (if the exchange loss is an exchange loss of part of a trade) or a non-trading exchange gain (if the exchange loss is a non-trading exchange loss).

- (7) Subsection (2) above shall not apply in a case where—

- (a) the right constituting the asset mentioned in subsection (1) above arises under a loan made by the company,
- (b) the circumstances are such that, had the parties to the transaction been dealing at arm's length, its terms would have been the same except that interest would have been charged on the loan or, as the case may be, charged at a higher rate, and
- (c) in computing for tax purposes the profits or losses of the company for the accounting period which constitutes the accrual period or in which the accrual period falls the whole of the loan has been treated under section 770 of the Taxes Act 1988 (undervalue or overvalue) as if interest had been charged on it or, as the case may be, charged at a higher rate.

- (8) Subsection (9) below applies where—

- (a) paragraphs (a) and (b) of subsection (7) above apply, and

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- (b) in computing for tax purposes the profits or losses of the company for the accounting period which constitutes the accrual period or in which the accrual period falls part of the loan has been treated under section 770 of the Taxes Act 1988 as if interest had been charged on it or, as the case may be, charged at a higher rate;

and in subsection (9) below the reference to the adjusted amount is to an amount equal to the part of the loan that has been so treated.

(9) In such a case—

- (a) subsection (2) above shall not apply, and
- (b) the exchange loss accruing to the company for the accrual period shall be treated as reduced to the amount it would have been if the amount of the loan had been the adjusted amount;

but paragraph (b) above shall only apply if the Board so direct.

(10) Where subsection (9)(b) above applies and the accrual period is not the last to occur as regards the asset while it is held by the company—

- (a) an amount equal to the amount by which the loss is treated as reduced shall be set off against appropriate exchange gains accruing to the company as regards the asset for subsequent accrual periods, and
- (b) any such gain shall then be treated as reduced by that amount or by so much of it as cannot be set off under this subsection against any such gain accruing for an earlier accrual period;

and an appropriate exchange gain is an exchange gain of the trade concerned (if the exchange loss is an exchange loss of a trade) or an exchange gain of the part of the trade concerned (if the exchange loss is an exchange loss of part of a trade) or a non-trading exchange gain (if the exchange loss is a non-trading exchange loss).

(11) Subsections (2) to (10) above shall not apply where—

- (a) the transaction is entered into by the company mentioned in subsection (1) above (company A) and another company (company B),
- (b) the companies are members of the same group when the transaction is entered into and throughout the accounting period which constitutes the accrual period mentioned in subsection (1) above or in which the accrual period falls,
- (c) as a result of the transaction, not only does company A become entitled or subject to the asset or liability falling within section 153(1)(a) or (2)(a) below but company B also becomes subject or entitled to the corresponding liability or asset (as the case may be) falling within section 153(2)(a) or (1)(a) below,
- (d) as regards that liability or asset an appropriate exchange gain accrues to company B for an accrual period coterminous with that mentioned in subsection (1) above,
- (e) throughout the accrual period concerned company A holds or owes the asset or liability either for the purposes of one trade or for non-trading purposes,
- (f) throughout the accrual period concerned company B owes or holds the liability or asset either for the purposes of one trade or for non-trading purposes, and
- (g) amount X is the same as amount Y.

(12) For the purposes of subsection (11) above—

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- (a) an appropriate exchange gain is an exchange gain of a trade or a non-trading exchange gain found (in either case) in the currency in which the exchange loss mentioned in subsection (1) above is found;
  - (b) amount X is the amount of the exchange loss mentioned in subsection (1) above;
  - (c) amount Y is the amount of the exchange gain mentioned in subsection (11) (d) above, found without regard to section 139 below;
  - (d) companies are members of the same group if by virtue of section 170 of the Taxation of Chargeable Gains Act 1992 they are members of the same group for the purposes of sections 171 to 181 of that Act.
- (13) Where the exchange loss mentioned in subsection (1) above represents the whole or part of an initial exchange loss accruing under section 127 above, this section shall have effect as if subsections (4) to (12) were omitted.
- (14) Regulations may make provision designed to supplement this section in its application to a case where the exchange loss mentioned in subsection (1) above represents the whole or part of an initial exchange loss accruing under section 127 above; and the regulations may in particular contain provision based on subsections (4) to (12) above but differing from those subsections to such extent as the Treasury think fit.
- (15) In applying subsections (1)(b), (4) and (7)(b) above all factors shall be taken into account including any interest or other sums that would have been payable, any currency that would have been involved, and the amount that any loan would have been.

### **137 Arm's length test: currency contracts**

- (1) Subsection (2) below applies where—
- (a) a qualifying company enters into a currency contract,
  - (b) the contract would not have been entered into at all if the parties to it had been dealing at arm's length, or the contract's terms would have been different if they had been so dealing,
  - (c) as regards the contract an exchange loss accrues to the company for an accrual period (or would so accrue apart from this section), and
  - (d) the Board direct that subsection (2) below shall apply;
- and any reference in this section to an exchange loss is to an exchange loss of a trade or an exchange loss of part of a trade or a non-trading exchange loss.
- (2) The exchange loss shall be treated as not accruing to the company for the accrual period.
- (3) Where subsection (2) above applies and the accrual period is not the last to occur as regards the contract while it is held by the company—
- (a) an amount equal to the amount of the loss shall be set off against appropriate exchange gains accruing to the company as regards the contract for subsequent accrual periods, and
  - (b) any such gain shall then be treated as reduced by that amount or by so much of it as cannot be set off under this subsection against any such gain accruing for an earlier accrual period;
- and an appropriate exchange gain is an exchange gain of the trade concerned (if the exchange loss is an exchange loss of a trade) or an exchange gain of the part of the

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trade concerned (if the exchange loss is an exchange loss of part of a trade) or a non-trading exchange gain (if the exchange loss is a non-trading exchange loss).

- (4) In applying subsection (1)(b) above all factors shall be taken into account including any currency that would have been involved and any amounts that would have been involved.

### **138 Arm's length test: non-sterling trades**

- (1) Subsection (2) below applies where—
- (a) an exchange gain of a trade, or of part of a trade, accruing to a company for an accrual period falls to be reduced by virtue of section 136(3), (6) or (10) or 137(3) above, and
  - (b) the amount falling to be set off is expressed in a currency (the first currency) different from the currency in which the gain is expressed (the second currency).
- (2) For the purposes of section 136(3), (6) or (10) or 137(3) the amount falling to be set off shall be treated as the equivalent, expressed in the second currency, of the amount expressed in the first currency.
- (3) The translation required by subsection (2) above shall be made by reference to the London closing exchange rate for the two currencies concerned for the first day of the accounting period which constitutes the relevant accrual period or in which that accrual period falls; and the relevant accrual period is the accrual period mentioned in subsection (1)(a) above.
- (4) Subsection (2) above shall have effect subject to the application for succeeding accrual periods of this section as regards an amount falling to be set off.
- (5) References in subsections (1) and (2) above to the amount falling to be set off include references to so much of that amount as remains after any application of section 136(3), (6) or (10) or 137(3) for earlier accrual periods.

#### *Deferral of unrealised gains*

### **139 Claim to defer unrealised gains**

- (1) This section applies where (apart from a claim under this section as regards an accounting period) an unrealised exchange gain would accrue to a company—
- (a) for an accrual period constituting or falling within the accounting period, and
  - (b) as regards a long-term capital asset or a long-term capital liability;
- and the reference here to an exchange gain is to an exchange gain of a trade or an exchange gain of part of a trade or a non-trading exchange gain.
- (2) This section does not apply unless an amount is available for relief under this section for the accounting period.
- (3) The company may claim that—
- (a) the gain, or part of it, shall be treated in accordance with section 140(3) below, and
  - (b) an amount shall be treated in accordance with section 140(4) to (10) below as regards the asset or liability.

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- (4) The claim must—
- (a) stipulate the amount of the gain or part to be treated as mentioned in subsection (3)(a) above;
  - (b) stipulate the amount to be treated as mentioned in subsection (3)(b) above;
  - (c) identify the asset or liability concerned.
- (5) The following rules apply to a claim—
- (a) only one claim may be made as regards an accounting period, but where this section applies in relation to two or more gains which would accrue to a company for an accrual period or accrual periods constituting or falling within the accounting period the claim may be made in relation to more than one of the gains;
  - (b) the amount stipulated under subsection (4)(b) above as regards an asset or liability must be the same as, and must be expressed in the same currency as, the amount of the gain or part stipulated under subsection (4)(a) above as regards the asset or liability;
  - (c) the amount (or total of the amounts) stipulated under subsection (4)(a) above as regards an accounting period must not exceed the amount available for relief under this section for the accounting period.
- (6) A claim may not be made or withdrawn as regards an accounting period if—
- (a) the company has been assessed to corporation tax for the period, and
  - (b) the assessment has become final and conclusive;
- but the preceding provisions of this subsection do not apply if the claim or withdrawal is made before the expiry of the period of two years beginning with the end of the accounting period.
- (7) In a case where—
- (a) the period of six years beginning with the end of an accounting period expires, and
  - (b) no assessment of the company to corporation tax for the accounting period has become final and conclusive,
- a claim may not be made or withdrawn as regards that accounting period.
- (8) In a case where—
- (a) subsection (6) or (7) above would otherwise prevent a claim being made in a particular case, and
  - (b) the Board make a determination under this subsection,
- a claim may be made on or before such day as the Board allow.

#### **140 Deferral of unrealised gains**

- (1) This section applies where a claim is made under section 139 above as regards an asset or liability.
- (2) For the purposes of this section—
  - (a) the first accrual period is the accrual period mentioned in section 139(1) above, and
  - (b) the second accrual period is the accrual period next occurring as regards the asset or liability while it is held or owed by the company.



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- (3) Any gain or part whose amount is stipulated under section 139(4)(a) above as regards the asset or liability shall be treated as not accruing as regards the asset or liability for the first accrual period.
- (4) If throughout the second accrual period the asset is held, or the liability is owed, by the company solely for the purposes of a trade or part of a trade—
  - (a) an exchange gain of the trade or part for the accrual period shall be treated as accruing to the company as regards the asset or liability,
  - (b) the amount of the gain shall be the amount stipulated under section 139(4)(b) above as regards the asset or liability, and
  - (c) section 128(4) above shall apply.
- (5) If throughout the second accrual period the asset is held, or the liability is owed, by the company solely for purposes other than trading purposes—
  - (a) a non-trading exchange gain for the accrual period shall be treated as accruing to the company as regards the asset or liability,
  - (b) the amount of the gain shall be the amount stipulated under section 139(4)(b) above as regards the asset or liability, and
  - (c) section 129(2) above shall apply.
- (6) Where as regards the second accrual period neither subsection (4) nor subsection (5) above applies—
  - (a) the amount stipulated under section 139(4)(b) above as regards the asset or liability shall be apportioned for the period on a just and reasonable basis, and
  - (b) subsections (7) and (8) below shall apply.
- (7) Where for the second accrual period part of an amount is attributed to a trade or part of a trade under subsection (6) above—
  - (a) an exchange gain of the trade or part for the accrual period shall be treated as accruing to the company as regards the asset or liability,
  - (b) the amount of the gain shall be the amount of the part so attributed, and
  - (c) section 128(4) above shall apply.
- (8) Where for the second accrual period part of an amount is attributed to purposes other than trading purposes under subsection (6) above—
  - (a) a non-trading exchange gain for the accrual period shall be treated as accruing to the company as regards the asset or liability,
  - (b) the amount of the gain shall be the amount of the part so attributed, and
  - (c) section 129(2) above shall apply.
- (9) In a case where—
  - (a) an exchange gain of a trade or of part of a trade for the second accrual period is treated as accruing to a company by virtue of the preceding provisions of this section (or would be so treated apart from this subsection), and
  - (b) in that period the asset or liability is to any extent held or owed by the company in exempt circumstances,to that extent the gain shall be treated as a non-trading exchange gain (and not as a gain of the trade or part) and section 129(2) above shall apply.
- (10) Any apportionment required by subsection (9) above shall be made on a just and reasonable basis.

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- (11) Subsections (4) to (10) above shall have effect subject to any further application of section 139 above as regards the asset or liability.
- (12) For the purposes of this section a part of a trade is any part of a trade whose basic profits or losses for the relevant accounting period are by virtue of regulations under section 94 above to be computed and expressed in a particular currency for the purposes of corporation tax; and the relevant accounting period is the accounting period which constitutes the second accrual period or in which that accrual period falls.

#### **141 Deferral: amount available for relief**

- (1) An amount is available for relief under section 139 above for an accounting period if amount A is exceeded by amount B or (if amount C is lower than amount B) amount A is exceeded by amount C; and the amount available for relief for the period is the amount of the difference between amount A and amount B or (as the case may be) between amount A and amount C.
- (2) Amount A is one tenth of the amount falling within subsection (3) below.
- (3) The amount falling within this subsection is an amount equal to the amount of the company's profits for the accounting period on which corporation tax would fall finally to be borne apart from—
- (a) a claim under section 139 above as regards the accounting period, and
  - (b) section 402 of the Taxes Act 1988 (group relief);
- and section 238(4) of the Taxes Act 1988 (amount of profits on which corporation tax falls finally to be borne) shall apply for the purposes of this subsection.
- (4) Amount B is the amount found by deducting amount B(2) from amount B(1) where—
- (a) amount B(1) is the total amount of unrealised exchange gains which accrue or would (apart from a claim under section 139 above as regards the accounting period) accrue to the company, in an accrual period or accrual periods constituting or falling within the accounting period, as regards long-term capital assets or long-term capital liabilities or both;
  - (b) amount B(2) is the total amount of unrealised exchange losses accruing to the company in such an accrual period or accrual periods as regards such assets or liabilities or both.
- (5) Amount C is the amount found by deducting amount C(2) from amount C(1) where—
- (a) amount C(1) is the total amount of exchange gains which accrue or would (apart from a claim under section 139 above as regards the accounting period) accrue to the company, in an accrual period or accrual periods falling within the accounting period, as regards relevant items;
  - (b) amount C(2) is the total amount of exchange losses accruing to the company in such an accrual period or periods as regards relevant items.
- (6) In subsections (4) and (5) above the references to exchange gains and losses are to exchange gains and losses of a trade and exchange gains and losses of part of a trade and non-trading exchange gains and losses.
- (7) For the purposes of subsection (5) above relevant items are—
- (a) assets falling within section 153(1)(a) below;
  - (b) liabilities falling within section 153(2)(a) below;
  - (c) currency contracts.

## **142 Deferral: non-sterling trades**

- (1) Where apart from this subsection—
- (a) a gain falling within section 139(1) above would be expressed in a currency other than sterling, or
  - (b) a gain or loss falling within section 141(4) or (5) above would be expressed in a currency other than sterling,
- the amount of the gain or loss shall be treated for the purposes of sections 139 to 141 above as the sterling equivalent of its amount expressed in the other currency.
- (2) For the purposes of subsection (1) above the sterling equivalent of an amount is—
- (a) the sterling equivalent calculated by reference to such rate of exchange as applies by virtue of section 93(6) above in the case of the basic profits or losses for the accounting period concerned of the trade of which the gain or loss is a gain or loss (or would be apart from section 139 above), or
  - (b) the sterling equivalent calculated by reference to such rate of exchange as applies by virtue of section 94(11) above in the case of the basic profits or losses for the accounting period concerned of the part of the trade of which the gain or loss is a gain or loss (or would be apart from section 139 above).
- (3) Subsection (4) below applies where—
- (a) part of an exchange gain of a trade, or part of an exchange gain of part of a trade, is treated as not accruing to a company for an accrual period by virtue of section 140(3) above, and
  - (b) the local currency of the trade or part for the accounting period which constitutes the accrual period or in which it falls is a currency other than sterling.
- (4) The amount the company is treated as receiving under section 128(4) above in respect of the accounting period and by virtue of the gain (as reduced) shall be taken into account after the basic profits or losses of the trade or part for the accounting period are found in sterling for the purposes of corporation tax.
- (5) In a case where—
- (a) an exchange gain of a trade, or of part of a trade, for an accrual period is treated as accruing to a company under section 140 above, and
  - (b) the local currency of the trade or part for the accounting period which constitutes the accrual period or in which it falls is a currency other than sterling,
- the amount of the gain shall be treated as the local currency equivalent of its amount expressed in sterling.
- (6) The translation required by subsection (5) above shall be made by reference to the London closing exchange rate for the two currencies concerned—
- (a) for the last day of the accrual period mentioned in subsection (5) above, or
  - (b) if that accrual period does not end with the end of a day, for the day on which that accrual period ends.

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### **143 Deferral: supplementary**

- (1) For the purposes of sections 139 and 141 above and this section an exchange gain or loss is unrealised if the accrual period concerned is one which ends solely by virtue of an accounting period of the company coming to an end.
- (2) In a case where—
- (a) an unrealised exchange gain would accrue as mentioned in section 139(1) above,
  - (b) the gain represents the whole or part of an initial exchange gain accruing under section 127 above, and
  - (c) the whole or part of the unrealised exchange gain is attributable to any part by which the nominal amount of the debt has decreased,
- the company may not claim under section 139 above as regards so much of the unrealised exchange gain as is so attributable.
- (3) In applying subsection (2)(c) above the gain shall be apportioned on a just and reasonable basis.
- (4) For the purposes of sections 139 and 141 above an asset or liability is a long-term capital asset or liability if the following conditions are fulfilled—
- (a) the asset or liability falls within section 153(1)(a) or (2)(a) below,
  - (b) the debt under which it subsists is such that, under the terms as originally entered into, the time for settlement is not less than one year from the time when the debt was created, and
  - (c) the asset or liability represents capital throughout the accounting period mentioned in section 139(1) above;
- and the time for settlement is the earliest time at which the creditor can require settlement if he exercises all available options and rights.
- (5) For the purposes of section 140 above an asset is held, or a liability is owed, in exempt circumstances at a given time if it is then held or owed—
- (a) for the purposes of long term insurance business;
  - (b) for the purposes of mutual insurance business;
  - (c) for the purposes of the occupation of commercial woodlands;
  - (d) by a housing association approved at that time for the purposes of section 488 of the Taxes Act 1988;
  - (e) by a self-build society approved at that time for the purposes of section 489 of that Act.
- (6) In subsection (5) above—
- “long term insurance business” means insurance business of any of the classes specified in Schedule 1 to the Insurance Companies Act 1982;
- “commercial woodlands” means woodlands in the United Kingdom which are managed on a commercial basis and with a view to the realisation of profits.
- (7) Regulations may—
- (a) make provision modifying the effect of sections 139 to 142 above and the preceding provisions of this section in a case where the debt under which a long-term capital asset or liability subsists is settled and replaced to any extent

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- by another debt under which (or other debts under each of which) such an asset or liability subsists;
- (b) make provision modifying the effect of sections 139 to 142 above and the preceding provisions of this section in a case where a group of companies is involved;
  - (c) provide that the amount falling within section 141(3) above shall be treated as reduced in accordance with prescribed rules;
- and any provision under paragraph (a) above may include provision that realised gains or losses are to be treated as wholly or partly unrealised.

### *Irrecoverable debts*

#### **144 Irrecoverable debts**

- (1) In a case where—
  - (a) a qualifying company holds an asset consisting of a right to settlement under a qualifying debt or owes a liability consisting of a duty to settle under such a debt, and
  - (b) the inspector is satisfied, as regards any accounting period of the company, that all of the debt outstanding immediately before the end of the period could at that time reasonably have been regarded as irrecoverable,the company shall be treated for the purposes of this Chapter as if immediately before the end of that accounting period it ceased to be entitled to the asset or subject to the liability.
- (2) Subsection (3) below applies in a case where—
  - (a) paragraph (a) of subsection (1) above applies, and
  - (b) the inspector is satisfied, as regards any accounting period of the company, that part of the debt outstanding immediately before the end of the period could at that time reasonably have been regarded as irrecoverable.
- (3) The company shall be treated for the purposes of this Chapter as if—
  - (a) immediately after the beginning of the accounting period next following the accounting period mentioned in subsection (2) above there were a decrease in the nominal amount of the debt outstanding, and
  - (b) the decrease were of an amount equal to so much of the debt, expressed in its settlement currency, as was outstanding immediately before the end of the accounting period mentioned in subsection (2) above and in the opinion of the inspector could at that time reasonably have been regarded as irrecoverable.
- (4) Where there is an appeal, this section shall be construed as if—
  - (a) “inspector is satisfied” (in each place) read “Commissioners concerned are satisfied”, and
  - (b) “opinion of the inspector” read “opinion of the Commissioners concerned”.

#### **145 Irrecoverable debts that become recoverable**

- (1) Subsection (2) below applies where—
  - (a) a company has been treated as mentioned in section 144(1) above as regards a debt,

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- (b) at a time (the later time) falling after the end of the accounting period mentioned in section 144(1)(b) above all or part of the debt is actually outstanding, and
  - (c) the inspector is satisfied that all or part of the amount actually outstanding at the later time could at that time reasonably have been regarded as recoverable.
- (2) The company shall be treated for the purposes of this Chapter as if—
- (a) immediately after the later time it had become entitled to an asset consisting of a right to settlement under the debt or (as the case may be) subject to a liability consisting of a duty to settle under the debt, and
  - (b) the nominal amount of the debt outstanding, at the time the company became entitled or subject to the asset or liability, were an amount equal to so much of the debt, expressed in its settlement currency, as was actually outstanding at the later time and in the opinion of the inspector could at that time reasonably have been regarded as recoverable.
- (3) Subsections (4) and (5) below apply where—
- (a) a company has been treated as mentioned in section 144(3) above as regards a debt, or
  - (b) a company has been treated as mentioned in subsection (2) above as regards a debt by virtue of the fact that in the opinion of the inspector part of the debt could, at the later time, reasonably have been regarded as recoverable.
- (4) In a case where—
- (a) at a time (the relevant time) falling after the end of the accounting period mentioned in section 144(2)(b) above or (as the case may be) falling after the later time all or part of the debt is actually outstanding,
  - (b) the inspector is satisfied that all or part of the amount actually outstanding at the relevant time could at that time reasonably have been regarded as recoverable, and
  - (c) the recoverable amount exceeds the amount which (taking into account section 144(3) above, subsection (2) above and any previous application of this subsection) is the nominal amount of the debt outstanding at the relevant time,
- the company shall be treated for the purposes of this Chapter as if, immediately after the relevant time, there were an increase in the nominal amount of the debt outstanding and the increase were of an amount equal to the excess mentioned in paragraph (c) above.
- (5) For the purposes of subsection (4) above the recoverable amount is an amount equal to so much of the debt, expressed in its settlement currency, as was actually outstanding at the relevant time and in the opinion of the inspector could at that time reasonably have been regarded as recoverable.
- (6) Where there is an appeal, this section shall be construed as if—
- (a) “inspector is satisfied” (in each place) read “Commissioners concerned are satisfied”, and
  - (b) “opinion of the inspector” (in each place) read “opinion of the Commissioners concerned”.

*Currency contracts: special cases*

**146 Early termination of currency contract**

- (1) This section applies where—
  - (a) a qualifying company ceases to be entitled to rights and subject to duties under a currency contract, and
  - (b) at the time it so ceases it has neither received nor made payment of any currency in pursuance of the contract.
- (2) If the company has a net contractual gain of a trade it shall be treated for the purposes of the Tax Acts as—
  - (a) incurring in the trade a loss of an amount equal to that gain, and
  - (b) incurring the loss in respect of the last relevant accounting period.
- (3) If the company has a net contractual loss of a trade it shall be treated for the purposes of the Tax Acts as—
  - (a) receiving in respect of the trade an amount equal to that loss, and
  - (b) receiving the amount in respect of the last relevant accounting period.
- (4) If the company has a net contractual non-trading gain—
  - (a) it shall be treated as incurring by virtue of section 129 above a loss of an amount equal to the amount of that gain,
  - (b) it shall be treated as incurring the loss in the last relevant accounting period, and
  - (c) in relation to that accounting period references to amount B shall be construed accordingly.
- (5) If the company has a net contractual non-trading loss—
  - (a) it shall be treated as receiving by virtue of section 129 above an amount equal to the amount of that loss,
  - (b) it shall be treated as receiving the amount in the last relevant accounting period, and
  - (c) in relation to that accounting period references to amount A shall be construed accordingly.
- (6) For the purposes of this section—
  - (a) the termination time is the time mentioned in subsection (1)(b) above;
  - (b) the last relevant accounting period is the company's accounting period in which the termination time falls;
  - (c) the relevant accounting periods are that accounting period and the company's accounting periods preceding it.
- (7) This is how to find out whether the company has a net contractual gain or loss of a trade and (if it has) its amount—
  - (a) take the aggregate of the amounts (if any) the company is treated as receiving under section 128(4) above in respect of the trade and the contract and the relevant accounting periods;
  - (b) take the aggregate of the amounts (if any) of the losses the company is treated as incurring under section 128(8) above in the trade and in respect of the contract and the relevant accounting periods;

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- (c) if the amount found under paragraph (a) above exceeds that found under paragraph (b) above the company has a net contractual gain of the trade of an amount equal to the excess;
  - (d) if the amount found under paragraph (b) above exceeds that found under paragraph (a) above the company has a net contractual loss of the trade of an amount equal to the excess;
- and in applying paragraphs (a) and (b) above ignore the effect of subsections (2) and (3) above.
- (8) This is how to find out whether the company has a net contractual non-trading gain or loss and (if it has) its amount—
  - (a) take the aggregate of the amounts (if any) the company is treated as receiving under section 129(2) above in respect of the contract in the relevant accounting periods;
  - (b) take the aggregate of the amounts (if any) of the losses the company is treated as incurring under section 129(4) above in respect of the contract in the relevant accounting periods;
  - (c) if the amount found under paragraph (a) above exceeds that found under paragraph (b) above the company has a net contractual non-trading gain of an amount equal to the excess;
  - (d) if the amount found under paragraph (b) above exceeds that found under paragraph (a) above the company has a net contractual non-trading loss of an amount equal to the excess;
- and in applying paragraphs (a) and (b) above ignore the effect of subsections (4) and (5) above.
- (9) For the purposes of subsection (7) above—
  - (a) an amount the company is treated as receiving under section 128(4) above in respect of part of the trade concerned shall be treated as received in respect of the trade;
  - (b) a loss the company is treated as incurring under section 128(8) above in part of the trade shall be treated as incurred in the trade.
- (10) Where any amount or loss the company is treated as receiving or incurring as mentioned in subsection (7)(a) or (b) above would (apart from this subsection) be expressed in a currency other than the local currency of the trade for the last relevant accounting period, it shall be treated for the purposes of this section as being the local currency equivalent of the amount or loss expressed in that other currency.
- (11) For the purposes of subsection (10) above the local currency equivalent of an amount is the equivalent—
  - (a) expressed in the local currency of the trade for the last relevant accounting period, and
  - (b) calculated by reference to the London closing exchange rate for the day in which the termination time falls.
- (12) Subsection (13) below applies where the company has (apart from that subsection) a net contractual gain or loss of a trade and—
  - (a) the trade concerned has ceased before the termination time, or
  - (b) the company carries on exempt activities immediately before the termination time.



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- (13) In such a case the company shall be treated for the purposes of this section as if—
- (a) it did not have the net contractual gain or loss of the trade, and
  - (b) it had a net contractual non-trading gain or loss (as the case may be) equal to the amount which would have been the amount of the net contractual gain or loss of the trade apart from paragraph (a) above.
- (14) Where any amount found under subsection (13)(b) above would (apart from this subsection) be expressed in a currency other than sterling, it shall be treated for the purposes of this section as being the sterling equivalent of the amount expressed in that other currency; and any translation required by this subsection shall be made by reference to the London closing exchange rate for the currencies concerned for the day in which the termination time falls.
- (15) For the purposes of this section a company carries on exempt activities at a given time if—
- (a) the activities it then carries on are or include any of the activities mentioned in subsection (16) below,
  - (b) it is a housing association approved at that time for the purposes of section 488 of the Taxes Act 1988, or
  - (c) it is a self-build society approved at that time for the purposes of section 489 of that Act.
- (16) The activities referred to in subsection (15)(a) above are—
- (a) the activity of long term insurance business;
  - (b) the activity of mutual insurance business;
  - (c) the activity of the occupation of commercial woodlands;
- and section 143(6) above applies for the purposes of this subsection.

#### **147 Reciprocal currency contracts**

- (1) This section applies where—
- (a) a qualifying company enters into a currency contract (the first contract), and
  - (b) the company closes out that contract by entering into another currency contract (the second contract) with rights and duties which are reciprocal to those under the first contract.
- (2) For the purposes of this Chapter the company shall be treated as ceasing, at the time it enters into the second contract, to be entitled to rights and subject to duties under the first contract without having received or made payment of any currency in pursuance of the first contract.
- (3) For the purposes of this Chapter the second contract shall be ignored (except in applying the preceding provisions of this section).

*Excess gains or losses*

#### **148 Excess gains or losses**

- (1) Regulations may provide that where prescribed conditions are fulfilled as regards an asset or liability relief from tax shall be afforded in respect of it; and subsections (2) to (4) below shall apply for the purposes of the regulations.

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- (2) The prescribed conditions must be or include ones that are met where it can reasonably be said that—
  - (a) a loss other than an exchange loss has accrued to a qualifying company as regards the asset or liability and no relief from tax is available under the Tax Acts in respect of the loss, and
  - (b) exchange gains have accrued to the company as regards the asset or liability without being matched (or fully matched) by exchange losses accruing to the company as regards the asset or liability.
- (3) The relief shall take such form as is prescribed and shall be such that the amount relieved does not exceed the amount of the unmatched gains.
- (4) The regulations may provide that if the loss mentioned in subsection (2)(a) above is made good to any extent the relief afforded by the regulations shall be cancelled (to the extent prescribed) by an assessment to tax.
- (5) Regulations may provide that where prescribed conditions are fulfilled as regards an asset or liability a charge to tax shall be imposed in respect of it; and subsections (6) and (7) below shall apply for the purposes of the regulations.
- (6) The prescribed conditions must be or include ones that are met where it can reasonably be said that—
  - (a) a gain other than an exchange gain has accrued to a qualifying company as regards the asset or liability and no charge to tax is imposed under the Tax Acts in respect of the gain, and
  - (b) exchange losses have accrued to the company as regards the asset or liability without being matched (or fully matched) by exchange gains accruing to the company as regards the asset or liability.
- (7) The charge shall take such form as is prescribed and shall be such that the amount charged does not exceed the amount of the unmatched losses.
- (8) Regulations under this section may include provision that the relief—
  - (a) is subject to a claim being made;
  - (b) is not available in prescribed circumstances.
- (9) Where (apart from this subsection) an exchange gain or loss would be expressed in a currency other than sterling, the amount of the gain or loss shall be treated for the purposes of this section as the sterling equivalent of its amount expressed in the other currency.
- (10) The translation required by subsection (9) above shall be made by reference to the London closing exchange rate for the two currencies concerned—
  - (a) for the last day of the accrual period for which the gain or loss accrues, or
  - (b) if that accrual period does not end with the end of a day, for the day on which that accrual period ends.
- (11) In this section—
  - (a) references to an exchange gain are to an exchange gain of a trade or an exchange gain of part of a trade or a non-trading exchange gain;
  - (b) references to an exchange loss are to an exchange loss of a trade or an exchange loss of part of a trade or a non-trading exchange loss.

*Local currency to be used*

**149 Local currency to be used**

- (1) Subject to the following provisions of this section, the local currency for the purposes of sections 125 to 127 above is sterling.
- (2) Subsections (4) to (6) below apply where—
  - (a) at any time in an accrual period an asset or contract was held, or a liability was owed, by a qualifying company for the purposes of a trade or trades carried on by it or of part or parts of a trade or trades carried on by it, and
  - (b) the local currency of any such trade or part for the relevant accounting period is a currency other than sterling.
- (3) References in this section to the relevant accounting period are to the accounting period which constitutes the accrual period or in which the accrual period falls.
- (4) If throughout the accrual period the asset or contract was held, or the liability was owed, by the company solely for trading purposes and only one local currency is involved, sections 125 to 128 above shall be applied by reference to that currency.
- (5) If throughout the accrual period the asset or contract was held, or the liability was owed, by the company solely for trading purposes and more than one local currency is involved, sections 125 to 128 above shall be applied separately by reference to each local currency involved and any exchange gain or loss of a trade or part shall be ignored unless found in the currency which is the local currency of the trade or part for the relevant accounting period.
- (6) In any other case—
  - (a) sections 125 to 128 above shall be applied by reference to sterling and sections 129 to 133 above shall be applied to any non-trading exchange gain or loss;
  - (b) sections 125 to 128 above shall then be applied separately by reference to each local currency involved (other than sterling);
  - (c) any exchange gain or loss of a trade or part shall be ignored unless found in the currency which is the local currency of the trade or part for the relevant accounting period (whether sterling or otherwise).
- (7) For the purposes of this section a part of a trade is any part of a trade whose basic profits or losses for the relevant accounting period are by virtue of regulations under section 94 above to be computed and expressed in a particular currency for the purposes of corporation tax.

*Exchange rate to be used*

**150 Exchange rate at translation times**

- (1) This section has effect to determine the exchange rate to be used in finding for the purposes of this Chapter the local currency equivalent at a translation time of—
  - (a) the basic valuation of an asset or liability,
  - (b) the nominal amount of a debt outstanding, or
  - (c) an amount of currency.
- (2) References in this section to the two currencies are to—

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- (a) the local currency and the nominal currency of the asset or liability concerned (where this section applies by virtue of subsection (1)(a) or (1)(b) above), or
  - (b) the local currency and the currency mentioned in subsection (1)(c) above (where this section applies by virtue of subsection (1)(c) above).
- (3) References in this section to an arm's length rate are to such exchange rate for the two currencies as might reasonably be expected to be agreed between persons dealing at arm's length.
- (4) Subsections (5) to (7) below apply where the translation time is a translation time solely by virtue of an accounting period of the company coming to an end.
- (5) In a case where—
  - (a) an exchange rate for the two currencies is used (as regards the asset, liability or currency contract concerned) in the accounts of the company for the last day of the accounting period, and
  - (b) the rate is an arm's length rate,that is the exchange rate to be used as regards the asset, liability or contract.
- (6) In a case where—
  - (a) the provision for whose purposes the local currency equivalent falls to be found is section 126 above,
  - (b) an exchange rate for the two currencies is not used (as regards the currency contract concerned) in the accounts of the company for the last day of the accounting period,
  - (c) the fact that such an exchange rate is not so used conforms with normal accountancy practice, and
  - (d) the exchange rate for the two currencies that is implied by the currency contract concerned is an arm's length rate,the exchange rate mentioned in paragraph (d) above is the exchange rate to be used as regards the contract.
- (7) In a case where neither subsection (5) nor subsection (6) above applies, the London closing exchange rate for the two currencies for the last day of the accounting period is the exchange rate to be used.
- (8) Subsections (9) to (14) below apply where the translation time is a translation time otherwise than solely by virtue of an accounting period of the company coming to an end.
- (9) In a case where—
  - (a) an exchange rate for the two currencies is used (as regards the asset, liability or currency contract concerned) in the accounts of the company at the translation time,
  - (b) the rate represents the average of arm's length rates for all the days falling within a period, and
  - (c) the arm's length rate for any given day (other than the first) falling within the period is not significantly different from the arm's length rate for the day preceding the given day,that is the exchange rate to be used as regards the asset, liability or contract.
- (10) In a case where—
  - (a) subsection (9) above does not apply,

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(b) an exchange rate for the two currencies is used (as regards the asset, liability or currency contract concerned) in the accounts of the company at the translation time, and

(c) the rate is an arm's length rate,

that is the exchange rate to be used as regards the asset, liability or contract.

(11) In a case where—

(a) the provision for whose purposes the local currency equivalent falls to be found is section 126 above,

(b) an exchange rate for the two currencies is not used (as regards the currency contract concerned) in the accounts of the company at the translation time,

(c) the fact that such an exchange rate is not so used conforms with normal accountancy practice, and

(d) the exchange rate for the two currencies that is implied by the currency contract concerned is an arm's length rate,

the exchange rate mentioned in paragraph (d) above is the exchange rate to be used as regards the contract.

(12) In a case where—

(a) none of subsections (9) to (11) above applies,

(b) it is the company's normal practice, when using an exchange rate in its accounts, to use a rate which represents an average of exchange rates obtaining for a period, and

(c) the London closing exchange rate for the two currencies for any given day (other than the first) falling within the relevant period is not significantly different from the London closing exchange rate for the two currencies for the day preceding the given day,

the rate which represents the average of the London closing exchange rates for the currencies for all the days falling within the relevant period is the exchange rate to be used.

(13) In a case where none of subsections (9) to (12) above applies, the London closing exchange rate for the day in which the translation time falls is the exchange rate to be used.

(14) References in subsection (12) above to the relevant period are to the period which—

(a) begins when the relevant accounting period begins, and

(b) ends at the end of the day in which the translation time falls;

and the relevant accounting period is the accounting period in which the translation time falls.

## **151 Exchange rate for debts whose amounts vary**

(1) Subsection (2) below has effect to determine the exchange rate to be used in finding for the purposes of this Chapter the local currency equivalent, at a time immediately after the nominal amount of a debt outstanding increases or decreases, of any amount.

(2) Subsections (9) to (14) of section 150 above (ignoring subsection (11)) shall apply for that purpose, but in so applying them—

(a) references to the translation time shall be construed as references to the time mentioned in subsection (1) above;

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- (b) references to the two currencies shall be construed as references to the local currency and the settlement currency of the debt.

*Interpretation: companies*

**152 Qualifying companies**

- (1) Subject to the following provisions of this section, any company is a qualifying company.
- (2) A company established for charitable purposes only is not a qualifying company.
- (3) Where a unit trust scheme is an authorised unit trust as respects an accounting period the trustees (who are deemed to be a company for certain purposes by section 468(1) of the Taxes Act 1988) are not a qualifying company as regards that period.
- (4) A company which is approved for the purposes of section 842 of the Taxes Act 1988 (investment trusts) for an accounting period is not a qualifying company as regards that period.
- (5) In this section—
  - “unit trust scheme” has the same meaning as in section 469 of the Taxes Act 1988;
  - “authorised unit trust” has the same meaning as in section 468 of that Act.

*Interpretation: assets, liabilities and contracts*

**153 Qualifying assets and liabilities**

- (1) As regards a qualifying company, each of the following is a qualifying asset—
  - (a) a right to settlement under a qualifying debt (whether or not the debt is a debt on a security);
  - (b) a unit of currency;
  - (c) a share held in qualifying circumstances;
 but paragraph (a) above shall have effect subject to subsections (3) and (4) below.
- (2) As regards a qualifying company, each of the following is a qualifying liability—
  - (a) a duty to settle under a qualifying debt (whether or not the debt is a debt on a security);
  - (b) a liability that takes the form of a provision made by the company in respect of a duty to which it may become subject and which (if it were to become subject to it) would be a duty to settle under a qualifying debt;
  - (c) a duty to transfer a right to settlement under a qualifying debt on a security, where the duty subsists under a contract and the company is not entitled to the right;
  - (d) a duty to transfer a share or shares, where the duty subsists under a contract and the company is not entitled to the share or shares;
 but paragraphs (a) to (d) above shall have effect subject to subsections (5) to (9) below.
- (3) A right to settlement under a qualifying debt is not a qualifying asset if it is a right under a currency contract.

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- (4) A right to settlement under a qualifying debt is not a qualifying asset if the debt is a debt on a security which under the terms of issue can be converted into or exchanged for a share or shares; but the preceding provisions of this subsection do not apply if the security is a deep gain security or the right is held in qualifying circumstances.
- (5) A duty to settle under a qualifying debt is not a qualifying liability if it is a duty under a currency contract.
- (6) A duty to settle under a qualifying debt is not a qualifying liability if the debt is a debt on a security which under the terms of issue can be converted into or exchanged for a share or shares; but the preceding provisions of this subsection do not apply if the security is a deep gain security.
- (7) A liability falling within subsection (2)(b) above is not a qualifying liability unless—
  - (a) the duty to settle would (if the company were to become subject to it) be owed for the purposes of a trade, and
  - (b) the provision falls to be taken into account (apart from this Chapter) in computing the profits or losses of the trade for corporation tax purposes.
- (8) A duty falling within subsection (2)(c) above is not a qualifying liability unless the right would be a qualifying asset if the company were entitled to it.
- (9) A duty falling within subsection (2)(d) above is not a qualifying liability unless the share (or each of the shares) would be a qualifying asset if the company were entitled to it.
- (10) For the purposes of this section each of the following is a qualifying debt—
  - (a) a debt falling to be settled by the payment of money;
  - (b) a debt falling to be settled by the transfer of a right to settlement under another debt, itself falling to be settled by the payment of money;and for the purposes of this subsection an ecu shall be regarded as money.
- (11) For the purposes of subsections (1)(c) and (4) above qualifying circumstances, in relation to an asset consisting of a share or a right to settlement, are circumstances where the qualifying company carries on a trade and—
  - (a) if the company were to transfer the asset, the transfer would fall to be taken into account (apart from this Chapter) in computing the profits or losses of the trade for corporation tax purposes, and
  - (b) if the asset were held by the company at the end of an accounting period, the valuation of the asset to be shown in the company's accounts for that time would fall to be found by taking the local currency equivalent at that time of the valuation put on the asset by the company (whether at that time or earlier) expressed in the nominal currency of the asset;and the reference here to the local currency is to the local currency of the trade for the accounting period.
- (12) Interest accrued in respect of a debt shall not be treated as part of the debt.

#### **154 Definitions connected with assets**

- (1) Subject to the following provisions of this section, a company becomes entitled to an asset when it becomes unconditionally entitled to it.

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- (2) In determining whether or not a company is unconditionally entitled to an asset, any transfer by way of security of the asset or of any interest or right in or over the asset shall be ignored.
- (3) Where a company agrees to acquire an asset by transfer it becomes entitled to it when the contract is made and not on a later transfer made pursuant to the contract; but the preceding provisions of this subsection do not apply where the agreement is by way of a currency contract.
- (4) Where a company agrees to dispose of an asset by transfer it ceases to be entitled to it when the contract is made and not on a later transfer made pursuant to the contract.
- (5) If a contract is conditional (whether on the exercise of an option or otherwise) for the purposes of subsections (3) and (4) above it is made when the condition is satisfied.
- (6) Where a company ceases to be entitled to an asset and at a later time becomes entitled to the same asset, with effect from the later time the asset shall be treated as if it were a different asset.
- (7) In a case where—
  - (a) at different times a company becomes entitled to rights to settlement under debts on securities, and
  - (b) the rights are of the same kind,the rights shall be treated as different assets and not part of the same asset.
- (8) Whether a transaction involves a company becoming entitled to—
  - (a) one asset consisting of a right to settlement under a debt on a security, or
  - (b) a number of such assets,shall be determined according to the facts of the case concerned.
- (9) For the purpose of deciding whether rights to settlement under debts on securities of a particular kind are held by a company, rights of that kind acquired earlier shall be treated as disposed of before rights of that kind acquired later; and references here to acquisition and disposal are references to becoming entitled and ceasing to be entitled.
- (10) For the purpose of deciding whether shares of a particular kind are held by a company, shares of that kind acquired earlier shall be treated as disposed of before shares of that kind acquired later; and references here to acquisition and disposal are references to becoming entitled and ceasing to be entitled.
- (11) In a case where—
  - (a) a rule is used for the purpose mentioned in subsection (9) or (10) above when the company's accounts are prepared,
  - (b) the rule differs from that contained in the subsection, and
  - (c) the accounts are prepared in accordance with normal accountancy practice,the rule used when the accounts are prepared (and not the rule in the subsection) shall be used for the purpose.
- (12) In a case where—
  - (a) a company would (apart from this subsection) become entitled to an asset at a particular time (the later time) by virtue of the preceding provisions of this section,
  - (b) the asset falls within section 153(1)(a) above,



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- (c) the time at which the company, in drawing up its accounts, regards itself as becoming entitled to the asset is a time (the earlier time) earlier than the later time, and
  - (d) the accounts are drawn up in accordance with normal accountancy practice, the company shall be taken to have become entitled to the asset at the earlier time and not at the later time.
- (13) Where subsection (12) above applies, as regards any time beginning with the earlier time and ending immediately before the later time the nominal amount of the debt shall be taken to be—
  - (a) such amount as the company treats as the nominal amount in its accounts, or
  - (b) such amount as it would so treat in accordance with normal accountancy practice (if that amount is different from the amount found under paragraph (a) above).
- (14) A company holds an asset at a particular time if it is entitled to it at that time.

## **155 Definitions connected with liabilities**

- (1) Subject to the following provisions of this section, a company becomes subject to a liability falling within section 153(2)(a) above when it becomes unconditionally subject to it.
- (2) Where a company agrees to acquire a liability falling within section 153(2)(a) above by transfer it becomes subject to it when the contract is made and not on a later transfer made pursuant to the contract.
- (3) Where a company agrees to dispose of a liability falling within section 153(2)(a) above by transfer it ceases to be subject to it when the contract is made and not on a later transfer made pursuant to the contract.
- (4) If a contract is conditional (whether on the exercise of an option or otherwise) for the purposes of subsections (2) and (3) above it is made when the condition is satisfied.
- (5) Where a company ceases to be subject to a liability falling within section 153(2)(a) above and at a later time becomes subject to the same liability, with effect from the later time the liability shall be treated as if it were a different liability.
- (6) A company becomes subject to a liability falling within section 153(2)(b) above at the time with effect from which it makes the provision.
- (7) A company ceases to be subject to a liability falling within section 153(2)(b) above at the time with effect from which it deletes the provision or (if different) the time with effect from which it would delete the provision under normal accountancy practice.
- (8) Where a company makes a provision falling within section 153(2)(b) above and later changes the amount, the company shall be treated as—
  - (a) deleting (with effect from the time when the change becomes effective) the provision representing the amount before the change, and
  - (b) making (with effect from that time) a new provision representing the amount as changed;and so on for further changes.

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- (9) A company ceases to be subject to a liability falling within section 153(2)(c) above when it becomes entitled to the right concerned, unless it ceases to be subject to the liability earlier apart from this subsection.
- (10) A company ceases to be subject to a liability falling within section 153(2)(d) above when it becomes entitled to the share or shares, unless it ceases to be subject to the liability earlier apart from this subsection.
- (11) In a case where—
- (a) a company would (apart from this subsection) become subject to a liability at a particular time (the later time) by virtue of the preceding provisions of this section,
  - (b) the liability falls within section 153(2)(a) above,
  - (c) the time at which the company, in drawing up its accounts, regards itself as becoming subject to the liability is a time (the earlier time) earlier than the later time, and
  - (d) the accounts are drawn up in accordance with normal accountancy practice, the company shall be taken to have become subject to the liability at the earlier time and not at the later time.
- (12) Where subsection (11) above applies, as regards any time beginning with the earlier time and ending immediately before the later time the nominal amount of the debt shall be taken to be—
- (a) such amount as the company treats as the nominal amount in its accounts, or
  - (b) such amount as it would so treat in accordance with normal accountancy practice (if that amount is different from the amount found under paragraph (a) above).
- (13) A company owes a liability at a particular time if it is subject to it at that time.

## **156 Assets and liabilities: other matters**

- (1) Each of the following questions shall be determined according to the facts of the case concerned—
- (a) whether a transaction (or series of transactions) involves the creation of one asset consisting of a right to settlement under a debt or a number of assets consisting of a number of such rights;
  - (b) whether a transaction (or series of transactions) involves the creation of one liability consisting of a duty to settle under a debt or a number of liabilities consisting of a number of such duties;
  - (c) whether a transaction (or series of transactions) involves the creation of both an asset (or assets) held and a liability (or liabilities) owed by the same company.
- (2) Subsection (3) below applies where—
- (a) a company, in drawing up its accounts, regards itself as becoming entitled or subject to an asset or liability at a particular time,
  - (b) the company, in drawing up its accounts, regards itself as ceasing to be entitled or subject to the asset or liability at a later time,
  - (c) at the time mentioned in paragraph (a) above it could reasonably be expected that the company would become entitled or subject to such an asset or liability,

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- (d) the asset or liability does not in fact come into existence before the later time but (if it did) it would fall within section 153(1)(a) or (2)(a) above, and
  - (e) the accounts are drawn up in accordance with normal accountancy practice.
- (3) The company shall be taken to—
- (a) become entitled or subject to such an asset or liability at the time it regards itself as becoming so entitled or subject, and
  - (b) cease to be entitled or subject to such an asset or liability at the time it regards itself as ceasing to be so entitled or subject.
- (4) Where subsection (3) above applies, as regards any time beginning with the time mentioned in subsection (3)(a) and ending with the time mentioned in subsection (3)(b) the nominal amount of the debt shall be taken to be—
- (a) such amount as the company treats as the nominal amount in its accounts, or
  - (b) such amount as it would so treat in accordance with normal accountancy practice (if that amount is different from the amount found under paragraph (a) above).

#### **157 Definitions connected with currency contracts**

- (1) A company becomes entitled to rights and subject to duties under a currency contract when it enters into the contract.
- (2) A company holds a currency contract at a particular time if it is then entitled to rights and subject to duties under the contract; and it is immaterial when the rights and duties fall to be exercised and performed.

*Interpretation: other provisions*

#### **158 Translation times and accrual periods**

- (1) Where a qualifying company holds a qualifying asset the following are translation times as regards the asset—
  - (a) the time immediately after the company becomes entitled to the asset;
  - (b) the time immediately before the company ceases to be entitled to the asset;
  - (c) any time which is a time when an accounting period of the company ends and which falls after the time mentioned in paragraph (a) above and before the time mentioned in paragraph (b) above.
- (2) Where a qualifying company owes a qualifying liability the following are translation times as regards the liability—
  - (a) the time immediately after the company becomes subject to the liability;
  - (b) the time immediately before the company ceases to be subject to the liability;
  - (c) any time which is a time when an accounting period of the company ends and which falls after the time mentioned in paragraph (a) above and before the time mentioned in paragraph (b) above.
- (3) Where a qualifying company enters into a currency contract the following are translation times as regards the contract—
  - (a) the time immediately after the company becomes entitled to rights and subject to duties under the contract;

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- (b) the time immediately before the company ceases to be entitled to those rights and subject to those duties;
  - (c) any time which is a time when an accounting period of the company ends and which falls after the time mentioned in paragraph (a) above and before the time mentioned in paragraph (b) above.
- (4) As regards a qualifying asset, a qualifying liability or a currency contract an accrual period is a period which—
- (a) begins with a time which is a translation time (other than the last to fall) as regards the asset, liability or contract, and
  - (b) ends with the time which is the next translation time to fall as regards the asset, liability or contract.

### **159 Basic valuation**

- (1) Subject to the following provisions of this section, the basic valuation of an asset or liability is—
- (a) such valuation as the company puts on it with regard to the time immediately after the company becomes entitled or subject to it, or
  - (b) such valuation as the company would put on it with regard to that time under normal accountancy practice, if that valuation is different from that found under paragraph (a) above.
- (2) Where (apart from this subsection) the valuation under subsection (1) above would be in a currency (the actual currency) other than the nominal currency, it shall be taken to be the equivalent, expressed in terms of the nominal currency, of the valuation in the actual currency; and the translation required by this subsection shall be made by reference to the London closing exchange rate for the two currencies concerned for the day in which the time mentioned in subsection (1) above falls.
- (3) The basic valuation of a liability falling within section 153(2)(c) or (d) above is the consideration for the company becoming subject to the liability; and any consideration or part that is not pecuniary shall be taken to be equal to its open market value—
- (a) found at the time when the company becomes subject to the liability, and
  - (b) if part of the consideration is pecuniary, expressed in the same currency as that part.
- (4) Where (apart from this subsection) the valuation under subsection (3) above would be in a currency (the actual currency) other than the nominal currency, it shall be taken to be the equivalent, expressed in terms of the nominal currency, of the valuation in the actual currency; and the translation required by this subsection shall be made by reference to the London closing exchange rate for the two currencies concerned for the day on which the company becomes subject to the liability.
- (5) Subsections (6) to (9) below apply where—
- (a) the company becomes entitled to a right to settlement under a qualifying debt on a security, and
  - (b) the circumstances are such that section 713(2)(b) or (3)(b) of the Taxes Act 1988 applies (transferee treated as entitled under accrued income scheme to relief or a sum found in sterling).
- (6) In such a case the basic valuation of the right shall be found by taking the consideration for the company becoming entitled to the right and—

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- (a) subtracting such of the amount found under section 713(2)(b) as is attributable to the right, or
  - (b) adding such of the amount found under section 713(3)(b) as is attributable to the right;
- and any apportionment of consideration or of the amount found under section 713(2)(b) or (3)(b) shall be made on a just and reasonable basis.
- (7) The following rules apply for the purposes of subsection (6) above—
- (a) any consideration or part that is pecuniary shall be expressed in sterling (if not otherwise so expressed);
  - (b) any consideration or part that is not pecuniary shall be taken to be equal to its open market value, found at the time when the company becomes entitled to the right and expressed in sterling.
- (8) Where the nominal currency of the right mentioned in subsection (5) above is not sterling, the valuation found in sterling under subsection (6) above shall be taken to be its equivalent expressed in terms of the nominal currency.
- (9) Any translation required by subsection (7) or (8) above shall be made by reference to the London closing exchange rate for the currencies concerned for the day on which the company becomes entitled to the right.
- (10) Subsections (11) and (12) below apply where—
- (a) section 127 above applies as regards an asset or liability for an accrual period (the earlier period), and
  - (b) section 125 or 127 above applies as regards the asset or liability for the next accrual period (the later period).
- (11) As regards the later period the basic valuation of the asset or liability shall be taken to be—
- (a) the nominal amount of the debt outstanding immediately before the beginning of the later period, or
  - (b) if section 127(7) above also applies as regards the earlier period, the amount found under section 127(10) for that period.
- (12) As regards an accrual period which falls after the later period the basic valuation of the asset or liability shall be the amount found under subsection (11) above, subject to any subsequent application of that subsection.

## **160 Nominal currency of assets and liabilities**

- (1) As regards an asset mentioned in section 153(1)(a) above, or a liability mentioned in section 153(2)(a) or (b) or (c) above, the nominal currency is the settlement currency of the debt mentioned in the paragraph concerned.
- (2) As regards an asset mentioned in section 153(1)(b) above, the nominal currency is the currency concerned.
- (3) As regards an asset mentioned in section 153(1)(c) above, the nominal currency is the currency in which the share is denominated.
- (4) As regards a liability mentioned in section 153(2)(d) above, the nominal currency is the currency in which the share is (or shares are) denominated.

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### **161 Settlement currency of a debt**

- (1) Subject to the following provisions of this section, the settlement currency of a debt is the currency in which ultimate settlement of the debt falls to be made.
- (2) In a case where—
  - (a) ultimate settlement of a debt falls to be made in a particular currency, but
  - (b) the amount of the currency falls to be determined by reference to the value at any time of an asset consisting of or denominated in another currency,the settlement currency of the debt is the other currency.
- (3) As regards a debt mentioned in section 153(2)(b) above, and as regards a case where section 156(3) above applies, in subsections (1) and (2) above “falls” (in each place) shall be read as “would fall”.
- (4) Where the settlement currency of a debt cannot be determined under subsections (1) to (3) above, the settlement currency of the debt is the currency that can reasonably be regarded as the most appropriate—
  - (a) deeming the state of affairs at settlement to be the same as the state of affairs at the material time, and
  - (b) having regard to subsections (1) to (3) above;and the material time is the time immediately after the company becomes entitled to the asset mentioned in section 153(1)(a) above or subject to the liability mentioned in section 153(2)(a) or (b) or (c) above.
- (5) For the purposes of this section the ecu shall be regarded as a currency.

### **162 Nominal amount of a debt**

- (1) The nominal amount of a debt outstanding at any time is the amount of the debt outstanding at that time, expressed in terms of the settlement currency of the debt.
- (2) In a case where—
  - (a) a payment or repayment is made at any time in a currency other than the settlement currency of a debt, and
  - (b) it falls to be decided whether there is in consequence an increase or decrease in the nominal amount of the debt outstanding,the amount of the payment or repayment shall be taken to be its equivalent expressed in terms of the settlement currency of the debt.
- (3) Any translation required by this section shall be made by reference to the London closing exchange rate for the currencies concerned for the day in which the time concerned falls.

### **163 Local currency of a trade**

- (1) Subject to subsection (2) below, the local currency of a trade for an accounting period is sterling.
- (2) Where by virtue of regulations under section 93 above the basic profits or losses of a trade for an accounting period are to be computed and expressed in a currency other than sterling for the purposes of corporation tax, that other currency is the local currency of the trade for the period.

- (3) Where by virtue of regulations under section 94 above the basic profits or losses of part of a trade for an accounting period are to be computed and expressed in a particular currency for the purposes of corporation tax, that currency is the local currency of the part for the period.
- (4) For the purposes of this section the ecu shall be regarded as a currency other than sterling; and references in this Chapter to a currency other than sterling shall be construed accordingly.

#### **164 Interpretation: miscellaneous**

- (1) References to—
  - (a) initial exchange gains and losses,
  - (b) exchange gains and losses of a trade or of part of a trade,
  - (c) non-trading exchange gains and losses, and
  - (d) the accrual of gains and losses mentioned in paragraphs (a) to (c) above,shall be construed in accordance with sections 125 to 129 above and Schedule 15 to this Act.
- (2) References to a currency contract shall be construed in accordance with section 126(1) above.
- (3) References to a qualifying debt shall be construed in accordance with section 153(10) above.
- (4) References to a company's commencement day shall be construed in accordance with section 165(7) below.
- (5) The local currency equivalent of a valuation of an asset or liability, or of an amount, is that valuation or amount expressed in terms of the local currency (a process sometimes known as translation).
- (6) References to the basic profits or losses of a trade for an accounting period shall be construed in accordance with section 93(2) above.
- (7) References to the basic profits or losses of part of a trade for an accounting period shall be construed in accordance with section 94(4) above.
- (8) References to a share are to a share in a company (whether or not the qualifying company).
- (9) Shares are of the same kind if they are treated as being of the same kind by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange.
- (10) Rights to settlement under debts on securities are of the same kind if the securities are treated as being of the same kind by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange.
- (11) "Security", in the expression "debt on a security", has the meaning given by section 132 of the Taxation of Chargeable Gains Act 1992.
- (12) References to deep gain securities shall be construed in accordance with Schedule 11 to the Finance Act 1989.

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- (13) References to the ecu are to the European currency unit as defined for the time being in Council Regulation No. 3180/78/EEC or in any Community instrument replacing it.
- (14) “Prescribed” means prescribed by regulations made under this Chapter.
- (15) A reference to this Chapter includes a reference to regulations made under it and a reference to a provision of this Chapter includes a reference to regulations made under the provision, unless otherwise required by the context or regulations.
- (16) Sections 152 to 163 above, and the preceding provisions of this section, apply for the purposes of this Chapter.

### *Miscellaneous*

## **165 Commencement and transitionals**

- (1) This Chapter applies where—
  - (a) a qualifying asset is one to which the company becomes entitled on or after the company’s commencement day;
  - (b) a qualifying liability is one to which the company becomes subject on or after that day;
  - (c) the rights and duties under a currency contract are ones to which the company becomes entitled and subject on or after that day.
- (2) Where a qualifying asset or liability is held or owed by a qualifying company both immediately before and at the beginning of its commencement day, for the purposes of this Chapter the company shall be treated as becoming entitled or subject to the asset or liability at the beginning of its commencement day.
- (3) Where both immediately before and at the beginning of its commencement day a qualifying company is entitled to rights and subject to duties under a currency contract, for the purposes of this Chapter the company shall be treated as becoming entitled and subject to them at the beginning of its commencement day.
- (4) Regulations may provide that where—
  - (a) a qualifying asset or liability is held or owed by a qualifying company both immediately before and at the beginning of its commencement day, and
  - (b) the asset or liability is of a prescribed description,
 subsection (2) above shall not apply and for the purposes of this Chapter the company shall be treated as becoming entitled or subject to the asset or liability at such time (falling after its commencement day) as is found in accordance with prescribed rules.
- (5) Regulations may provide that any rule made under subsection (4) above shall not apply, and that subsection (2) above shall accordingly apply, in a case where the company so elects in accordance with prescribed rules.
- (6) Schedule 16 to this Act (which contains transitional provisions) shall have effect.
- (7) For the purposes of this section—
  - (a) a company’s commencement day is the first day of its first accounting period to begin after the day preceding the appointed day;
  - (b) the appointed day is such day as may be appointed by order.



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- (8) Subsections (1) to (6) above do not apply for the purposes of construing Schedule 17 to this Act (which contains its own commencement provisions).

## **166 Anti-avoidance: change of accounting period**

- (1) This section applies where—
- (a) a company changes the date on which any accounting period is to begin,
  - (b) if the change had not been made an exchange gain or gains not accruing to the company would have accrued or an exchange loss or losses accruing to the company would not have accrued or an exchange gain or gains accruing would have been bigger or an exchange loss or losses accruing would have been smaller, and
  - (c) the change mentioned in paragraph (a) above was made for the purpose, or for purposes which include the purpose, of securing the non-accrual or reduction of the gain or gains or the accrual or increase of the loss or losses.
- (2) In such a case the inspector or on appeal the Commissioners concerned—
- (a) may in arriving at the exchange gains and losses accruing to the company assume that there had been no such change as is mentioned in subsection (1) (a) above, and
  - (b) may accordingly make, with regard to the accounting period mentioned in subsection (1)(a) above, such adjustment to the company's corporation tax liability as is just and reasonable.
- (3) For the purposes of this section—
- (a) an exchange gain is an exchange gain of a trade or an exchange gain of part of a trade or a non-trading exchange gain;
  - (b) an exchange loss is an exchange loss of a trade or an exchange loss of part of a trade or a non-trading exchange loss.

## **167 Orders and regulations**

- (1) Any power to make an order or regulations under this Chapter shall be exercisable by the Treasury.
- (2) Any power to make an order under this Chapter shall be exercisable by statutory instrument.
- (3) Any power to make regulations under this Chapter shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.
- (4) Any power to make regulations under this Chapter—
- (a) may be exercised as regards prescribed cases or descriptions of case;
  - (b) may be exercised differently in relation to different cases or descriptions of case.
- (5) Regulations under this Chapter may make provision in such way as the Treasury think fit, and in particular may amend or modify the effect of any enactment (whether or not contained in this Chapter).

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- (6) Regulations under this Chapter may include such supplementary, incidental, consequential or transitional provisions as appear to the Treasury to be necessary or expedient.
- (7) No specific provision of this Chapter about regulations shall prejudice the generality of subsections (4) to (6) above.

### **168 Insurance companies**

- (1) Subject to the following provisions of this section, this Chapter shall apply in relation to insurance companies as it applies in relation to other qualifying companies.
- (2) Regulations may make provision about the treatment for corporation tax purposes of exchange differences arising as regards assets and liabilities held or owed by insurance companies.
- (3) Any such provision may be made—
  - (a) about exchange differences arising as regards assets or liabilities (or both) generally or about a proportion of such differences;
  - (b) about exchange differences arising as regards prescribed descriptions of assets or liabilities (or both) or about a proportion of such differences;
  - (c) about exchange differences arising as regards individual assets or liabilities.
- (4) Any such provision may be made about assets or liabilities that are qualifying assets or liabilities, or about those that are not, or about both.
- (5) Regulations under this section may—
  - (a) contain exceptions (whether by reference to categories of insurance business or otherwise);
  - (b) contain provision about the circumstances in which a charge or relief is to arise, its amount, and other matters relating to it;
  - (c) provide for consequential adjustments in a company's corporation tax liability;
  - (d) exclude or modify the effect of any of the provisions of this Chapter.
- (6) References in this section to exchange differences are to gains and losses attributable to fluctuations in currency exchange rates.
- (7) For the purposes of this section an insurance company is a company to which Part II of the Insurance Companies Act 1982 applies.

### **169 Chargeable gains**

Schedule 17 to this Act (provisions which relate to the taxation of chargeable gains and are connected with other provisions of this Chapter) shall have effect.

### **170 Amendments**

Schedule 18 to this Act (which contains amendments) shall have effect.