

## SCHEDULES

### SCHEDULE 16

Section 165.

#### EXCHANGE GAINS AND LOSSES: TRANSITIONALS

##### *Introduction*

- 1 For the purposes of this Schedule an existing asset, liability or contract is an asset, liability or contract to which this Chapter applies by virtue of section 165(2) or (3) of this Act or by virtue of regulations under section 165(4) of this Act.

##### *General provision*

- 2 (1) Regulations may make such provision as the Treasury think fit with regard to the application of this Chapter to an existing asset, liability or contract (such as provision for finding the basic valuation of an asset or liability).
- (2) Nothing in the following provisions of this Schedule shall prejudice the generality of sub-paragraph (1) above.

##### *Attributed gain or loss*

- 3 (1) Regulations may provide that—
- (a) an amount found in accordance with prescribed rules shall be attributed to an existing asset or liability, and
  - (b) the amount shall be characterised as a gain or loss in accordance with prescribed rules.
- (2) The regulations may provide that an attributed gain or loss shall be set off against exchange losses or exchange gains accruing as regards the asset or liability; and for this purpose—
- (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.
- (3) The regulations may provide that if an event of a prescribed description occurs as regards the asset or liability at a time falling on or after the commencement day of the company concerned and at a time when all or part of an attributed gain or loss is outstanding—
- (a) an initial exchange gain or initial exchange loss of an amount found in accordance with prescribed rules shall be treated as accruing to the company as regards the asset or liability, or
  - (b) a chargeable gain or allowable loss of an amount found in accordance with prescribed rules shall be treated as accruing to the company as regards the asset or liability for the purposes of the Taxation of Chargeable Gains Act 1992.

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*Status: This is the original version (as it was originally enacted).*

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- (4) The regulations may provide that where—
- (a) apart from provision under this sub-paragraph, an allowable loss would be treated as accruing by virtue of provision made under sub-paragraph (3)(b) above, and
  - (b) the company concerned makes an election in accordance with prescribed rules,
- the loss shall not be treated as accruing and relief of an amount equal to it shall be given to the company in such form and manner as may be prescribed.
- (5) The regulations may provide that where provision under this paragraph has effect the outstanding attributed gain or loss shall be treated as reduced or extinguished.
- (6) The regulations may make provision—
- (a) as to the time when an initial exchange gain or initial exchange loss is to be treated as accruing and as to the extent to which it is to be treated as an exchange gain or loss of a trade or of part of a trade or as a non-trading exchange gain or loss;
  - (b) as to the occasion on which a chargeable gain or allowable loss is to be treated as accruing;
  - (c) as to other matters relating to setting off against, or the accrual of, gains or losses as mentioned in this paragraph.

*Adjustment of exchange gain or loss*

- 4 (1) Regulations may provide that where an exchange gain or exchange loss accrues to a company as regards an existing asset or liability (or would so accrue apart from the regulations)—
- (a) the amount of the gain or loss shall be deemed to be increased in accordance with prescribed rules,
  - (b) the amount of the gain or loss shall be deemed to be reduced in accordance with prescribed rules, or
  - (c) the gain or loss shall be deemed not to accrue.
- (2) For the purposes of this paragraph—
- (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.
- (3) The regulations may be framed by reference to—
- (a) exchange differences arising as regards the asset or liability at any time while the company actually holds or owes it (whether any such time falls before, on or after the company's commencement day);
  - (b) such other factors as the Treasury think fit;
- and for this purpose exchange differences are gains and losses attributable to fluctuations in currency exchange rates.
- (4) The regulations may include provision designed to prevent provision under them being avoided by the replacement (or partial replacement) of assets or liabilities by other assets or liabilities.

*Allowable losses*

- 5 (1) Regulations may provide that where—
- (a) an allowable loss of a prescribed description has accrued to a qualifying company for the purposes of the Taxation of Chargeable Gains Act 1992,
  - (b) the loss has accrued before the company's commencement day,
  - (c) all or part of the loss has not been allowed as a deduction under that Act, and
  - (d) prescribed conditions (whether relating to the making of a claim or otherwise) are fulfilled,
- the loss shall be set off against exchange gains accruing to the company.
- (2) For the purposes of this paragraph 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.
- (3) The regulations may provide that the loss may only be set off—
- (a) to the extent that it has not been allowed as a deduction under the Taxation of Chargeable Gains Act 1992;
  - (b) against exchange gains accruing as regards assets or liabilities of a prescribed description.
- (4) The regulations may include rules for ascertaining whether an allowable loss of a prescribed description has or has not been allowed as a deduction under the Taxation of Chargeable Gains Act 1992.

*Miscellaneous*

- 6 (1) Regulations may provide—
- (a) that provision under paragraph 3 above or provision under paragraph 4 above or provision under neither of them shall apply in the case of an asset or liability according to the circumstances of the case;
  - (b) that provision under paragraph 3(3)(a) above or provision under paragraph 3(3)(b) above shall apply in the case of an asset or liability according to the circumstances of the case.
- (2) The circumstances may be framed by reference to—
- (a) whether, and how, exchange differences arising as regards the asset or liability would be taken into account for tax purposes apart from this Chapter;
  - (b) such other factors as the Treasury think fit;
- and for this purpose exchange differences are gains and losses attributable to fluctuations in currency exchange rates.