



# Finance Act 2000

## 2000 CHAPTER 17

### PART III

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

### CHAPTER II

#### OTHER PROVISIONS

#### *International matters*

#### **105 Corporation tax: use of currencies other than sterling.**

(1) For sections 92 to 95 of the <sup>M1</sup>Finance Act 1993 there shall be substituted—

#### **“92 The basic rule: sterling to be used.**

(1) Where a company carries on a business, the profits or losses of the business for an accounting period shall for the purposes of corporation tax be computed and expressed in sterling; but this is subject to section 93 below.

(2) In this section—

“losses” includes management expenses and any allowances falling to be made under section 28 or 61(1) of the <sup>M2</sup>Capital Allowances Act 1990;

“profits” includes gains, income and any charges falling to be made under section 28 or 61(1) of that Act.

#### **93 Use of currency other than sterling.**

(1) This section applies where in an accounting period a company carries on a business and either the first condition or the second condition is fulfilled.

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- (2) The first condition is that—
- (a) the accounts of the company as a whole are prepared in a currency other than sterling in accordance with normal accounting practice; and
  - (b) in the case of a company which is not resident in the United Kingdom, the company makes a return of accounts for its branch in the United Kingdom prepared in such a currency in accordance with such practice.
- (3) The second condition is that—
- (a) the accounts of the company as a whole are prepared in sterling but, so far as relating to the business, they are prepared, using the closing rate/net investment method, from financial statements prepared in a currency other than sterling; or
  - (b) in the case of a company which is not resident in the United Kingdom, the company makes a return of accounts for its branch in the United Kingdom prepared in sterling but, so far as relating to the business, it is prepared, using that method, from financial statements prepared in such a currency.
- (4) The profits or losses of the business for an accounting period shall for the purposes of corporation tax be found by—
- (a) taking the amount of all the profits and losses of the business for the period computed and expressed in the relevant foreign currency;
  - (b) taking account of any of the following which are so computed and expressed—
    - (i) any management expenses brought forward under section 75(3) of the Taxes Act 1988 from an earlier accounting period;
    - (ii) any losses of the business brought forward under section 392B or 393 of that Act from such a period; and
    - (iii) any non-trading deficits on loan relationships brought forward under section 83 of the <sup>M3</sup>Finance Act 1996 from the previous accounting period; and
  - (c) taking the sterling equivalent of the amount found by applying paragraphs (a) and (b) above.
- (5) In the application of section 22B, 34, 35, 38C, 38D or 79A of the <sup>M4</sup>Capital Allowances Act 1990 for the purposes of subsection (4)(a) or (b) above, it shall be assumed that any sterling amount mentioned in any of those sections is its equivalent expressed in the relevant foreign currency.
- (6) Where in an accounting period—
- (a) a company carries on different parts of a business through different branches (whether within or outside the United Kingdom); and
  - (b) this section would apply differently in relation to different parts if they were separate businesses,
- those parts shall be treated for the purposes of this section as if they were separate businesses for that period.
- (7) In this section, unless the context otherwise requires—

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“accounts”, in relation to a company, means—

- (a) the annual accounts of the company prepared in accordance with Part VII of the <sup>M5</sup>Companies Act 1985 or Part VIII of the <sup>M6</sup>Companies (Northern Ireland) Order 1986; or
- (b) if the company is not required to prepare such accounts, the accounts which it is required to keep under the law of its home State; or
- (c) if the company is not so required to keep accounts, such of its accounts as most closely correspond to accounts which it would have been required to prepare if the provisions of that Part applied to it;

“branch” includes any collection of assets and liabilities;

“the closing rate/net investment method” means the method so called as described under the title “Foreign currency translation” in the Statement of Standard Accounting Practice issued in April 1983 by the Institute of Chartered Accountants in England and Wales;

“home State”, in relation to a company, means the country or territory under whose laws the company is incorporated;

“losses” has the same meaning as in section 92 above except that it does not include allowable losses within the meaning of the <sup>M7</sup>Taxation of Chargeable Gains Act 1992;

“profits” has the same meaning as in section 92 above except that it does not include chargeable gains within the meaning of that Act;

“the relevant foreign currency” means the currency other than sterling or, where the first condition is fulfilled and two different such currencies are involved, the currency in which the return of accounts is prepared;

“return of accounts”, in relation to a branch in the United Kingdom, means a return of such accounts of the branch as may be required by the Inland Revenue under paragraph 3 of Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters).

#### **94 Rules for ascertaining currency equivalents.**

- (1) Any receipt or expense which is to be taken into account in making a computation under subsection (1) of section 92 above for an accounting period, and is denominated in a currency other than sterling, shall be translated into its sterling equivalent—
  - (a) if either of the conditions mentioned in subsection (2) below is fulfilled, by reference to the rate used in the preparation of the accounts of the company as a whole for that period;
  - (b) if neither of those conditions is fulfilled, by reference to the London closing exchange rate for the relevant day.
- (2) The conditions are—
  - (a) that the rate is an arm’s length exchange rate for the relevant day;
  - (b) that the rate is an average arm’s length exchange rate for a period ending with that day, or for a period not exceeding three months which includes that day, and the arm’s length exchange rate for any day in

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that period (except the first) is not significantly different from that for the preceding day.

(3) Subject to subsections (5) and (7) below, any amount found by applying paragraphs (a) and (b) of subsection (4) of section 93 above shall be translated into its sterling equivalent by reference to the London closing exchange rate for the relevant day.

(4) The following—

- (a) any receipt or expense which is to be taken into account in making a calculation for the purposes of subsection (4)(a) or (b) of section 93 above, and is denominated in a currency other than the relevant foreign currency; and
- (b) any such sterling amount as is referred to in subsection (5) of that section,

shall be translated into its equivalent expressed in the relevant foreign currency by reference to the London closing exchange rate for the relevant day.

(5) Where section 93 above applies by virtue of the first condition mentioned in that section, then, as regards the business or part of the business, the company—

- (a) may elect, by a notice given to an officer of the Board, that as from the first day of the accounting period in which the notice is given, an average arm's length exchange rate shall be used for the purposes of subsection (3) above instead of the rate there mentioned; and
- (b) may withdraw such an election, by a notice so given, as from the first day of the first accounting period beginning on or after the date of the notice.

(6) Where an election under subsection (5) above is withdrawn, no further election may be made under that subsection so as to take effect before the third anniversary of the day on which the withdrawal takes effect.

(7) Where—

- (a) section 93 above applies by virtue of the second condition mentioned in that section; and
- (b) the accounts of the company, so far as relating to the business or part of the business, are prepared by reference to an average arm's length exchange rate,

that exchange rate shall be used for the purposes of subsection (3) above instead of the rate there mentioned.

(8) In this section—

“accounts” has the same meaning as in section 93 above;

“arm's length exchange rate” means such exchange rate as might reasonably be expected to be agreed between persons dealing at arm's length;

“average arm's length exchange rate”, in relation to a period, means the rate which represents an appropriate average of arm's length exchange rates for the period;

“the relevant day” means—

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- (a) for the purposes of subsections (1), (2) and (4)(a) above, the day on which the company becomes entitled to the receipt or incurs (or is treated as incurring) the expense;
  - (b) for the purposes of subsection (3) above, the last day of the accounting period in question;
  - (c) for the purposes of subsection (4)(b) above, the day on which the company incurs the capital expenditure.
- (9) Nothing in this section affects the operation of Chapter IV of Part VII of the Taxes Act 1988 (controlled foreign companies) or Chapter II of this Part.
- (10) Nothing in paragraph 88 of Schedule 18 to the <sup>M8</sup>Finance Act 1998 (company tax returns, assessments and related matters) shall be taken to prevent any amount which is taken to be conclusively determined for the purposes of the Corporation Tax Acts from being translated under this section by reference to an exchange rate which was not used to determine the amount which can no longer be altered.”.
- (2) Where any of the items referred to in section 93(4)(b) of the <sup>M9</sup>Finance Act 1993 (as substituted by subsection (1) above) fall to be taken into account in the first accounting period in relation to which this section has effect, the amounts of those items shall be computed and expressed in the relevant currency by reference to the London closing exchange rate for the last day of the immediately preceding accounting period.
- (3) Where [<sup>F1</sup>any amount falls to be taken into account under Chapter 5 of Part 2 of the Capital Allowances Act as available qualifying expenditure] for the first accounting period in relation to which this section has effect relate to expenditure which was incurred before the beginning of that period, the amounts of those items shall be computed and expressed in the relevant currency by reference to the London closing exchange rate for the last day of the immediately preceding accounting period.
- (4) Subject to subsection (5) below, this section has effect for accounting periods beginning on or after 1st January 2000 and ending on or after 21st March 2000.
- (5) Any company which did not, for the accounting period immediately preceding the first accounting period falling within subsection (4) above, make an election in respect of a trade or part of a trade under the Local Currency Elections Regulations 1994 may, by notice given to an officer of the Board on or before 31st August 2000, elect that this section shall not have effect in relation to it until the first accounting period beginning on or after 1st July 2000.

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#### Textual Amendments

- F1** Words substituted (22.3.2001 with effect as mentioned in s. 579(1) of the amending Act) by 2001 c. 2, ss. 578, 579, Sch 2, para. 106 (with Sch. 3)
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#### Marginal Citations

- M1** 1993 c. 34.  
**M2** 1990 c. 1.  
**M3** 1996 c. 8.  
**M4** 1990 c. 1.  
**M5** 1985 c. 6.  
**M6** S.I. 1986/1032 (N.I.6).  
**M7** 1992 c. 12.

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**M8** 1998 c. 36.

**M9** 1993 c. 34.

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