
STATUTORY INSTRUMENTS

1994 No. 3229

INCOME TAX

**The Exchange Gains and Losses (Excess
Gains and Losses) Regulations 1994**

<i>Made</i>	- - - -	<i>15th December 1994</i>
<i>Laid before the House of Commons</i>	- - - -	<i>16th December 1994</i>
<i>Coming into force</i>	- -	<i>23rd March 1995</i>

The Treasury, in exercise of the powers conferred on them by sections 148, 164(14) and 167(1) of the Finance Act 1993⁽¹⁾, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Exchange Gains and Losses (Excess Gains and Losses) Regulations 1994.

(2) These Regulations shall come into force on 23rd March 1995.

(3) In these Regulations “the 1993 Act” means the Finance Act 1993.

Non-exchange losses and gains

2.—(1) In any case where as respects an asset or liability—

(a) an exchange gain has accrued to a qualifying company, and

(b) a loss which is not an exchange loss (“the non-exchange loss”) subsequently accrues to the company—

(i) at the time the company ceases to be entitled or subject to the asset or liability or to part of the asset or liability, and

(ii) by virtue of an arm’s length transaction, and

(c) relief from tax is not (apart from this regulation) available under the Tax Acts in respect of the non-exchange loss,

then, on a claim being made by the company, an initial exchange loss equal in amount to the excess (if any) of A over B or, if less, the amount of the non-exchange loss shall be treated as accruing to the company as respects that asset or liability for the appropriate accrual period.

(2) Paragraph (1) above does not apply in relation to any asset or liability as respects which the loss referred to in paragraph (1)(b) accrues to the company if the company acquired the asset or became subject to the liability in pursuance of a transaction which was not an arm's length transaction.

(3) For the purposes of this regulation the amount of any non-exchange loss shall be reduced by the amount, if any, of any insurance or compensation moneys or other sum to which the company is entitled in respect of the loss which do not fall to be taken into account in computing the company's profits for the purposes of corporation tax.

(4) In any case where as respects an asset or liability—

- (a) an exchange loss has accrued to a qualifying company, and
- (b) a gain which is not an exchange gain ("the non-exchange gain") subsequently accrues to the company at the time the company ceases to be entitled or subject to the asset or liability or to part of the asset or liability, and
- (c) the non-exchange gain is not (apart from this regulation) chargeable to tax under the Tax Acts,

then an initial exchange gain equal in amount to the excess (if any) of B over A or, if less, the amount of the non-exchange gain shall be treated as accruing to the company as respects that asset or liability for the appropriate accrual period.

(5) For the purposes of paragraphs (1) and (4) above

A is the aggregate amount of any exchange gains which have accrued to the company as respects the asset or liability for all accrual periods since the company's commencement day;

B is the aggregate amount of any exchange losses which have accrued to the company as respects the asset or liability for all accrual periods since the company's commencement day;

"the appropriate accrual period", in relation to any asset or liability—

- (i) if the company ceases to be entitled or subject to part only of the asset or liability, means the accrual period in which it ceases to be so entitled or subject, and
- (ii) in any other case, means the last accrual period as respects that asset or liability; and

"an arm's length transaction" is any transaction the terms of which are such as might reasonably be expected to have been agreed between parties at arm's length.

(6) The amount of any exchange gain or exchange loss shall not be taken into account under paragraph (1) or (4) above unless by virtue of section 128(4) or (8) or 129(2) or (4) of the 1993 Act the company has been treated as receiving an amount equal to that amount or incurring a loss equal to that loss.

(7) A claim under paragraph (1) above must be made to the inspector before the expiry of the period of two years beginning with the end of the accounting period in which the non-exchange loss accrued to the company.

Cancellation of relief where loss is recovered

3.—(1) Where—

- (a) by virtue of regulation 2(1) an initial exchange loss has been treated as accruing to a company ("the loss making company") as respects an asset or liability by reason of a non-exchange loss accruing as respects that asset or liability, and
- (b) the whole or part of that non-exchange loss is subsequently recovered by the loss making company, or by another company in the same group, in an accounting period of the loss making company,

an initial exchange gain equal in amount to the amount of the net exchange loss found in accordance with paragraphs (3) and (4) below shall be deemed to accrue to the loss making company.

For the purposes of this paragraph, companies are members of a group if by virtue of section 170 of the Taxation of Chargeable Gains Act 1992⁽²⁾ they are members of a group for the purposes of sections 171 to 181 of that Act.

- (2) Any initial exchange gain deemed to accrue under paragraph (1) above shall—
- (a) if the initial exchange loss referred to above was an exchange loss of a trade or part of a trade and the loss making company carries on that trade or part at the time of the recovery, be deemed to be an exchange gain of that trade or part, and section 128 of the 1993 Act shall apply accordingly,
 - (b) if sub-paragraph (a) above does not apply, be deemed to a non-trading exchange gain, and section 129 of the 1993 Act shall apply accordingly,

and in either case the gain shall be deemed to accrue as respects the asset or liability for an accrual period identical to the accounting period in which the time of recovery falls.

(3) For the purposes of paragraph (1) above the net exchange loss shall (subject to paragraph (4) below) be equal to the excess (if any) of

A over $(B-C)$

where—

A is the amount of the loss recovered, translated into the company's local currency (if it is not in that currency) using the London closing exchange rates for the two currencies for the date of the recovery,

B is the amount of the non-exchange loss referred to in paragraph (1) above, and

C is the amount of the initial exchange loss deemed to accrue to the company by virtue of regulation 2(1).

(4) Where parts of the loss are recovered at different times, then in relation to any recovery after the first—

- (a) amount A shall include any amount recovered earlier;
- (b) the net exchange loss found in accordance with paragraph (3) above shall be reduced by the amount (or aggregate amount, if more than one) of any initial exchange gain deemed to accrue (under paragraph (1) above) in relation to any earlier recovery.

15th December 1994

Derek Conway
Andrew Mitchell
Two of the Lords Commissioners of Her
Majesty's Treasury

(2) 1992 c. 12. Section 170 was amended by paragraph 5 of Schedule 6 to the Finance (No. 2) Act 1992 (c. 48).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations, which come into force on 23rd March 1995, make provision for amounts to be treated as exchange gains and losses in certain circumstances.

Regulation 1 provides for citation, commencement and interpretation.

Regulation 2 provides that where exchange gains have accrued as regards an asset or liability, and a non-exchange loss accrues when the company ceases to be entitled to all or part of the asset or liability, the company may claim that an initial exchange loss should be treated as arising equal in amount to:

the excess of exchange gains which have been taken into account as regards the asset or liability over exchange losses which have been taken into account as regards the asset or liability, or if lower, the amount of the non-exchange loss.

Similarly, where exchange losses have accrued as regards an asset or liability, and a non-exchange gain accrues when the company ceases to be entitled to all or part of the asset or liability, regulation 2 provides for an initial exchange gain to be treated as arising equal in amount to:

the excess of exchange losses which have been taken into account as regards the asset or liability over exchange gains which have been taken into account as regards the asset or liability, or if lower, the amount of the non-exchange gain.

Regulation 3 provides that if, after relief has been given under regulation 2(1), the amount relieved is recovered, the relief previously allowed is cancelled by deeming an initial exchange gain to arise in the period of recovery.