
STATUTORY INSTRUMENTS

1996 No. 673

INCOME TAX

The Exchange Gains and Losses (Insurance Companies) (Amendment) Regulations 1996

<i>Made</i>	- - - -	<i>8th March 1996</i>
<i>Laid before the House of Commons</i>	- - - -	<i>8th March 1996</i>
<i>Coming into force</i>	- -	<i>31st March 1996</i>

The Treasury, in exercise of the powers conferred on them by sections 167(1) and (4) to (6) and 168(1) to (5) of the Finance Act 1993⁽¹⁾, hereby make the following Regulations:

1.—(1) These Regulations may be cited as the Exchange Gains and Losses (Insurance Companies) (Amendment) Regulations 1996 and shall come into force on 31st March 1996.

(2) Regulation 4 shall have effect in relation to disposals taking place on or after 1st April 1996.

(3) Regulation 5 shall have effect in relation to accounting periods ending after 31st March 1996.

2. The Exchange Gains and Losses (Insurance Companies) Regulations 1994⁽²⁾ (“the principal Regulations”) shall be amended in accordance with regulations 3 to 5.

3. For paragraph (3) of regulation 1 of the principal Regulations there shall be substituted—

“(3) In these Regulations unless the context otherwise requires—

“basic valuation” shall be construed in accordance with section 159(1) of the 1993 Act;

“loan relationship” shall be construed in accordance with the Corporation Tax Acts, except that a relationship shall not be a loan relationship where the profits or gains chargeable to tax under Case III of Schedule D which arise from the relationship are confined to interest;

“new holding” and “original shares” have the meanings given by section 126(1) of the 1992 Act;

“regulation 7 asset” shall be construed in accordance with regulation 7(1);

“the Taxes Act” means the Income and Corporation Taxes Act 1988⁽³⁾;

(1) 1993 c. 34.

(2) S.I. 1994/3231.

(3) 1988 c. 1.

“the 1992 Act” means the Taxation of Chargeable Gains Act 1992(4);

“the 1993 Act” means the Finance Act 1993.”

4. At the end of the principal Regulations there shall be added—

“7.—(1) An asset specified by this regulation is an asset to which regulations 8 to 12 apply; and any such asset is referred to in those regulations as a “regulation 7 asset”.

(2) An asset is specified by this regulation if it is an asset which, at the time of its disposal—

- (a) represents a loan relationship of a company;
- (b) is an asset to which paragraph (3), (4), (5) or (6) below applies; and
- (c) is held in exempt circumstances.

(3) This paragraph applies to an asset if—

- (a) the settlement currency of the debt to which it relates is a currency other than sterling; and
- (b) that debt is not a debt on a security.

(4) This paragraph applies to an asset if the debt to which it relates is a debt on a security and is in a foreign currency.

(5) This paragraph applies to an asset if it is comprised in a relevant holding and is denominated in a currency other than sterling.

(6) This paragraph applies to an asset if—

- (a) it is a qualifying corporate bond,
- (b) it would not, apart from this paragraph, be a regulation 7 asset,
- (c) it constitutes a new holding, and
- (d) the original shares, in relation to the new holding, consisted of a regulation 7 asset by virtue of paragraph (3), (4) or (5) above.

(7) For the purposes of paragraph (4) above a debt is a debt in a foreign currency if it is—

- (a) a debt expressed in a currency other than sterling;
- (b) a debt the amount of which in sterling falls at any time to be determined by reference to the value at that time of a currency other than sterling; or
- (c) subject to paragraph (8) below, a debt as respects which provision is made for its conversion into, or redemption in, a currency other than sterling.

(8) A debt is not a debt in a foreign currency for the purposes of paragraph (4) above by reason only that provision is made for its redemption on payment of an amount in a currency other than sterling equal, at the rate prevailing at the date of redemption, to a specified amount in sterling.

(9) For the purposes of paragraph (5) above an asset is comprised in a relevant holding if it consists of—

- (a) a unit in a unit trust scheme, or
- (b) a relevant interest in an offshore fund

to which section 212 of the 1992 Act(5) does not apply or would not apply if the asset were an asset of the company’s long term business fund.

(4) 1992 c. 12.

(5) Section 212 was amended by section 91(2)(b) and (3) of, and Part III(8) of Schedule 23 to, the Finance Act 1993 and by section 134(5) to (7) of, and paragraphs 9(2) and 28(5) of Schedule 8 to, the Finance Act 1995 (c. 4).

(10) For the purposes of paragraph (5) above—

- (a) a unit in a unit trust scheme, or
- (b) a right (other than a share in a company) which constitutes a relevant interest in an offshore fund,

shall be taken to be denominated in a currency other than sterling if the price at which it may be acquired from, or disposed of to, persons concerned in the management of the trust or fund is fixed by those persons in a currency other than sterling.

(11) For the purposes of paragraph (5) above shares constituting a relevant interest in an offshore fund shall be taken to be denominated in a currency other than sterling if their nominal value is expressed in such a currency.

(12) The reference in paragraph (2)(c) above to exempt circumstances shall be construed in accordance with paragraph 3 of Schedule 17 to the 1993 Act, but as if references in that paragraph to a currency were references to the debt to which the relationship relates.

(13) In this regulation—

“debt on a security” shall be construed in accordance with section 132 of the 1992 Act;

“long term business fund” has the meaning given by section 431(2) of the Taxes Act⁽⁶⁾;

“qualifying corporate bond” has the same meaning as in the 1992 Act;

“relevant interest in an offshore fund” has the meaning given by section 212(5) of the 1992 Act;

“security” includes a debenture that is deemed to be a security for the purposes of section 251 of the 1992 Act by virtue of subsection (6) of that section⁽⁷⁾;

“unit trust scheme” shall be construed in accordance with section 99 of the 1992 Act.

8.—(1) The amount of the chargeable gain accruing on the disposal of a regulation 7 asset shall, subject to paragraphs (5) and (6) below and to regulations 9 to 12, be computed by ascertaining the amount specified in paragraph (3) below (“the first amount”) and the amount specified in paragraph (4) below (“the second amount”).

(2) Where the second amount exceeds the first amount the excess shall be a chargeable gain; where the first amount exceeds the second amount the excess shall be an allowable loss; and where the first amount and the second amount are equal there shall be neither a chargeable gain nor an allowable loss.

(3) The first amount is the basic valuation of the asset translated into sterling at the time immediately after the company becomes entitled to the asset.

(4) The second amount is the basic valuation of the asset translated into sterling at the time immediately before the company ceases to be entitled to the asset.

(5) Where any profit on the sale of a regulation 7 asset would be treated wholly as a receipt falling to be brought into account in computing profits or gains charged under Case I of Schedule D, neither a chargeable gain nor an allowable loss shall be treated as arising.

(6) Where any profit on the sale of a regulation 7 asset would be treated partly as a receipt falling to be brought into account in computing profits or gains charged under Case I of Schedule D, any chargeable gain or allowable loss accruing by virtue of this regulation shall be reduced on a just and reasonable basis.

⁽⁶⁾ The definition of “long term business fund” was inserted in section 431(2) by paragraph 1(2)(b) of Schedule 6 to the Finance Act 1990 (c. 29).

⁽⁷⁾ Section 251(6) was inserted by section 84(2) of the Finance Act 1993.

(7) Any translation into sterling required by this regulation shall be made by reference to the London closing rate.

(8) The provisions of Chapters III and IV of Part II of the 1992 Act shall not apply to any computation required by this regulation.

(9) All regulation 7 assets which are the subject of the computation required by this regulation shall be treated as relevant securities within the meaning given by subsection (1) of section 108 of the 1992 Act; and that section shall apply accordingly.

(10) Nothing in this regulation shall be taken as preventing any gain or loss which is deemed to accrue by virtue of section 116(10)(b) of the 1992 Act from being brought into charge to tax.

9.—(1) This regulation applies in any case where—

- (a) an insurance company has acquired a regulation 7 asset, and
- (b) the asset was held by the company immediately before 1st April 1996.

(2) Regulation 8 shall apply on the disposal of the asset with the modification that the first amount shall be the basic valuation of the asset translated into sterling by reference to the London closing rate on 1st April 1996.

10.—(1) This regulation applies in any case where, for the purposes of sections 126 to 131 of the 1992 Act—

- (a) a regulation 7 asset constitutes the original shares, and
- (b) another regulation 7 asset constitutes the new holding.

(2) Regulation 8 shall apply on the disposal of the new holding with the modifications specified in paragraphs (3) and (4) below.

(3) The modification specified in this paragraph is that the first amount shall be the aggregate of—

- (a) the basic valuation of the original shares translated into sterling at the time immediately after the company became entitled to the original shares, and
- (b) the basic valuation of the new holding translated into sterling at the time immediately after the company became entitled to the new holding.

(4) The modification specified in this paragraph is that the second amount shall be the aggregate of—

- (a) the basic valuation of the original shares translated into sterling at the time immediately before the company became entitled to the new holding, and
- (b) the basic valuation of the new holding translated into sterling at the time immediately before the company ceased to be entitled to the new holding.

11.—(1) This regulation applies in any case where—

- (a) an asset is a regulation 7 asset by virtue of paragraph (5) of that regulation, and
- (b) the asset has at any time after 31st March 1996 and during the company's period of ownership been an asset which did not represent a loan relationship.

(2) Regulation 8 shall apply on the disposal of the asset with the modification that the first amount shall be the basic valuation of the asset translated into sterling at the beginning of the accounting period in which the asset first became a regulation 7 asset by virtue of paragraph (5) of that regulation.

12.—(1) This regulation applies in any case where an asset is a regulation 7 asset by virtue of paragraph (6) of that regulation.

(2) Regulation 8 shall apply on the disposal of the asset with the modifications that—

- (a) the first amount shall be the basic valuation of the original shares in relation to the asset translated into sterling at the time immediately after the company became entitled to the original shares, and
- (b) the second amount shall be the basic valuation of the original shares in relation to the asset translated into sterling at the time immediately before the company ceased to be entitled to the original shares.”

5. Regulation 6 of the principal Regulations is hereby revoked.

8th March 1996

Simon Burns
Bowen Wells
Two of the Lords Commissioners of Her
Majesty’s Treasury

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 Regulations)

These Regulations amend the Exchange Gains and Losses (Insurance Companies) Regulations 1994 (S.I.1994/3231) (“the principal Regulations”). They make new provision regarding the computation of the chargeable gain or allowable loss accruing to an insurance company on the disposal of certain assets.

Regulation 1 provides for citation, commencement and effect, and regulation 2 for the principal Regulations to be amended in accordance with regulations 3 to 5.

Regulation 3 substitutes a new paragraph (3) of regulation 1 in the principal Regulations. This paragraph provides general definitions for the purposes of the principal Regulations.

Regulation 4 provides for a number of new regulations (7 to 12) to be added to the principal Regulations. The new regulation 7 specifies the assets to which regulations 8 and 9 apply (a “regulation 7 asset”): the assets so specified are certain assets denominated or expressed in a currency other than sterling and which are held in exempt circumstances (an expression to be construed in accordance with paragraph 3 of Schedule 17 to the Finance Act 1993). The new regulation 8 provides for the chargeable gain or allowable loss accruing on the disposal of a regulation 7 asset to be computed by reference to the basic valuation of the asset translated into sterling, first at the time immediately after the company becomes entitled to the asset and, secondly, at the time immediately before the company ceases to be entitled to the asset. The new regulations 9 to 12 provide for the new regulation 8 to apply in a modified form in certain cases. The new regulation 9 applies where a regulation 7 asset was held immediately before 1st April 1996; the new regulation 10 where, for the purposes of sections 126 to 131 of the Taxation of Chargeable Gains Act 1992, a regulation 7 asset constitutes the original shares and another regulation 7 asset constitutes the new holding; the new regulation 11 where an asset is a regulation 7 asset by virtue of the new regulation 7(5) and has not always represented a loan relationship; and the new regulation 12 in any case where an asset is a regulation 7 asset by virtue of the new regulation 7(6).

Regulation 5 revokes regulation 6 of the principal Regulations.