
STATUTORY INSTRUMENTS

1998 No. 3081

**The Controlled Foreign Companies
(Excluded Countries) Regulations 1998**

Interpretation of regulations 5 and 6

7.—(1) In regulation 5(2) “capital profits or losses” means profits or losses arising in relation to chargeable assets.

(2) In regulations 5(3) and 6 references to “branch or agency income” or to “branch or agency income and gains” are references to income and gains that—

- (a) arise in or are derived from any branch or agency of a controlled foreign company, and
- (b) fall within sub-paragraph (e) of regulation 5(3) in the accounting period concerned.

(3) In regulation 5(3)—

- (a) the references to “the gross amount” of any income in sub-paragraphs (a) and (f) are references to the amount of that income before deduction of expenses or reserves;
- (b) the reference to “the gross amount” of any income and gains in sub-paragraph (b) is a reference to the amount of that income and those gains found—

- (i) after excluding any gain or loss arising on any loan or deposit referred to in that sub-paragraph which is offset by a loss or gain on a contract ancillary to that loan or deposit which would be a qualifying contract if the company were a qualifying company, and

- (ii) after deducting any exchange losses attributable to the loans or deposits referred to in that sub-paragraph to the extent that those losses have not already been excluded by virtue of paragraph (i) above, but

- (iii) before deducting other expenses or reserves;

- (c) the references to “the gross amount” of any income and gains in sub-paragraphs (c) and (d) are references to the amount of that income and those gains found after deducting any exchange losses attributable to the royalties, premiums or rents referred to in those sub-paragraphs but before deducting other expenses or reserves;

and the references to “the gross amounts” in regulation 6(2)(d) and (3) shall be construed accordingly.

(4) In regulation 5(3) references to persons not resident in the territory of residence of a controlled foreign company do not include references to a company not so resident in circumstances where—

- (a) the branch or agency of the company is situated in that territory, and
- (b) the transaction giving rise to the income and gains in question of the controlled foreign company is made with that branch or agency.

(5) In regulation 6(1)(b) the reference to the gross amount of income and gains is a reference to the amount of that income or of those gains before deduction of expenses or reserves.

(6) In regulation 6(1)(b) the reference to “the net amount” of the branch or agency income and gains, and in regulation 6(2)(d) the reference to “the net amount” of the profits of the branch or agency concerned, are references to the amount of that income, or of those profits, after deduction of

expenses but before tax, as determined in accordance with a generally accepted method of accounting for profits of branches or profits of agencies of companies.

(7) In paragraph (1) of this regulation a “chargeable asset” is any asset in the case of which one of the following conditions is satisfied, that is to say—

- (a) a gain accruing to the company on a disposal of that asset on or after the date of coming into force of these Regulations would, on the assumption that the company was within the charge to corporation tax, have fallen to be treated in relation to the company as a chargeable gain and would not have been taken into account as a receipt in computing the company’s income or profits or gains or losses for the purposes of the Income Tax Acts;
- (b) a chargeable gain or allowable loss would, on the assumption mentioned in sub-paragraph (a), be deemed to have accrued to the company on any disposal of that asset on or after the date mentioned in that sub-paragraph.

(8) In paragraph (3)(b)(i) of this regulation—

“qualifying company”—

- (a) as respects a contract falling within section 126(1) of the Finance Act 1993, has the meaning given by section 152 of that Act⁽¹⁾;
- (b) as respects a contract falling within section 147(1) of the Finance Act 1994, has the meaning given by section 154 of that Act;

“qualifying contract” means a contract falling within section 126(1) of the Finance Act 1993 or section 147(1) of the Finance Act 1994, as the case may be, other than a contract which, in the case of branch or agency income or gains which would be income or gains falling within sub-paragraph (b) of regulation 5(3) if branch or agency income and gains fell within that sub-paragraph, is not entered into by the branch or agency concerned.

(1) Section 152 was amended by Part V(3) of Schedule 41 to the Finance Act 1996 (c. 8).