



Finance Act 1993

1993 CHAPTER 34

PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER II

EXCHANGE GAINS AND LOSSES

Interpretation: assets, liabilities and contracts

153 Qualifying assets and liabilities

- (1) As regards a qualifying company, each of the following is a qualifying asset—
 - (a) a right to settlement under a qualifying debt (whether or not the debt is a debt on a security);
 - (b) a unit of currency;
 - (c) a share held in qualifying circumstances;but paragraph (a) above shall have effect subject to subsections (3) and (4) below.
- (2) As regards a qualifying company, each of the following is a qualifying liability—
 - (a) a duty to settle under a qualifying debt (whether or not the debt is a debt on a security);
 - (b) a liability that takes the form of a provision made by the company in respect of a duty to which it may become subject and which (if it were to become subject to it) would be a duty to settle under a qualifying debt;
 - (c) a duty to transfer a right to settlement under a qualifying debt on a security, where the duty subsists under a contract and the company is not entitled to the right;
 - (d) a duty to transfer a share or shares, where the duty subsists under a contract and the company is not entitled to the share or shares;

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but paragraphs (a) to (d) above shall have effect subject to subsections (5) to (9) below.

- (3) A right to settlement under a qualifying debt is not a qualifying asset if it is a right under a currency contract.
- (4) A right to settlement under a qualifying debt is not a qualifying asset if the debt is a debt on a security which under the terms of issue can be converted into or exchanged for a share or shares; but the preceding provisions of this subsection do not apply if the security is a deep gain security or the right is held in qualifying circumstances.
- (5) A duty to settle under a qualifying debt is not a qualifying liability if it is a duty under a currency contract.
- (6) A duty to settle under a qualifying debt is not a qualifying liability if the debt is a debt on a security which under the terms of issue can be converted into or exchanged for a share or shares; but the preceding provisions of this subsection do not apply if the security is a deep gain security.
- (7) A liability falling within subsection (2)(b) above is not a qualifying liability unless—
 - (a) the duty to settle would (if the company were to become subject to it) be owed for the purposes of a trade, and
 - (b) the provision falls to be taken into account (apart from this Chapter) in computing the profits or losses of the trade for corporation tax purposes.
- (8) A duty falling within subsection (2)(c) above is not a qualifying liability unless the right would be a qualifying asset if the company were entitled to it.
- (9) A duty falling within subsection (2)(d) above is not a qualifying liability unless the share (or each of the shares) would be a qualifying asset if the company were entitled to it.
- (10) For the purposes of this section each of the following is a qualifying debt—
 - (a) a debt falling to be settled by the payment of money;
 - (b) a debt falling to be settled by the transfer of a right to settlement under another debt, itself falling to be settled by the payment of money;and for the purposes of this subsection an ecu shall be regarded as money.
- (11) For the purposes of subsections (1)(c) and (4) above qualifying circumstances, in relation to an asset consisting of a share or a right to settlement, are circumstances where the qualifying company carries on a trade and—
 - (a) if the company were to transfer the asset, the transfer would fall to be taken into account (apart from this Chapter) in computing the profits or losses of the trade for corporation tax purposes, and
 - (b) if the asset were held by the company at the end of an accounting period, the valuation of the asset to be shown in the company's accounts for that time would fall to be found by taking the local currency equivalent at that time of the valuation put on the asset by the company (whether at that time or earlier) expressed in the nominal currency of the asset;and the reference here to the local currency is to the local currency of the trade for the accounting period.
- (12) Interest accrued in respect of a debt shall not be treated as part of the debt.

154 Definitions connected with assets

- (1) Subject to the following provisions of this section, a company becomes entitled to an asset when it becomes unconditionally entitled to it.
- (2) In determining whether or not a company is unconditionally entitled to an asset, any transfer by way of security of the asset or of any interest or right in or over the asset shall be ignored.
- (3) Where a company agrees to acquire an asset by transfer it becomes entitled to it when the contract is made and not on a later transfer made pursuant to the contract; but the preceding provisions of this subsection do not apply where the agreement is by way of a currency contract.
- (4) Where a company agrees to dispose of an asset by transfer it ceases to be entitled to it when the contract is made and not on a later transfer made pursuant to the contract.
- (5) If a contract is conditional (whether on the exercise of an option or otherwise) for the purposes of subsections (3) and (4) above it is made when the condition is satisfied.
- (6) Where a company ceases to be entitled to an asset and at a later time becomes entitled to the same asset, with effect from the later time the asset shall be treated as if it were a different asset.
- (7) In a case where—
 - (a) at different times a company becomes entitled to rights to settlement under debts on securities, and
 - (b) the rights are of the same kind,the rights shall be treated as different assets and not part of the same asset.
- (8) Whether a transaction involves a company becoming entitled to—
 - (a) one asset consisting of a right to settlement under a debt on a security, or
 - (b) a number of such assets,shall be determined according to the facts of the case concerned.
- (9) For the purpose of deciding whether rights to settlement under debts on securities of a particular kind are held by a company, rights of that kind acquired earlier shall be treated as disposed of before rights of that kind acquired later; and references here to acquisition and disposal are references to becoming entitled and ceasing to be entitled.
- (10) For the purpose of deciding whether shares of a particular kind are held by a company, shares of that kind acquired earlier shall be treated as disposed of before shares of that kind acquired later; and references here to acquisition and disposal are references to becoming entitled and ceasing to be entitled.
- (11) In a case where—
 - (a) a rule is used for the purpose mentioned in subsection (9) or (10) above when the company's accounts are prepared,
 - (b) the rule differs from that contained in the subsection, and
 - (c) the accounts are prepared in accordance with normal accountancy practice,the rule used when the accounts are prepared (and not the rule in the subsection) shall be used for the purpose.
- (12) In a case where—

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- (a) a company would (apart from this subsection) become entitled to an asset at a particular time (the later time) by virtue of the preceding provisions of this section,
 - (b) the asset falls within section 153(1)(a) above,
 - (c) the time at which the company, in drawing up its accounts, regards itself as becoming entitled to the asset is a time (the earlier time) earlier than the later time, and
 - (d) the accounts are drawn up in accordance with normal accountancy practice, the company shall be taken to have become entitled to the asset at the earlier time and not at the later time.
- (13) Where subsection (12) above applies, as regards any time beginning with the earlier time and ending immediately before the later time the nominal amount of the debt shall be taken to be—
- (a) such amount as the company treats as the nominal amount in its accounts, or
 - (b) such amount as it would so treat in accordance with normal accountancy practice (if that amount is different from the amount found under paragraph (a) above).
- (14) A company holds an asset at a particular time if it is entitled to it at that time.

155 Definitions connected with liabilities

- (1) Subject to the following provisions of this section, a company becomes subject to a liability falling within section 153(2)(a) above when it becomes unconditionally subject to it.
- (2) Where a company agrees to acquire a liability falling within section 153(2)(a) above by transfer it becomes subject to it when the contract is made and not on a later transfer made pursuant to the contract.
- (3) Where a company agrees to dispose of a liability falling within section 153(2)(a) above by transfer it ceases to be subject to it when the contract is made and not on a later transfer made pursuant to the contract.
- (4) If a contract is conditional (whether on the exercise of an option or otherwise) for the purposes of subsections (2) and (3) above it is made when the condition is satisfied.
- (5) Where a company ceases to be subject to a liability falling within section 153(2)(a) above and at a later time becomes subject to the same liability, with effect from the later time the liability shall be treated as if it were a different liability.
- (6) A company becomes subject to a liability falling within section 153(2)(b) above at the time with effect from which it makes the provision.
- (7) A company ceases to be subject to a liability falling within section 153(2)(b) above at the time with effect from which it deletes the provision or (if different) the time with effect from which it would delete the provision under normal accountancy practice.
- (8) Where a company makes a provision falling within section 153(2)(b) above and later changes the amount, the company shall be treated as—
 - (a) deleting (with effect from the time when the change becomes effective) the provision representing the amount before the change, and

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- (b) making (with effect from that time) a new provision representing the amount as changed;
and so on for further changes.
- (9) A company ceases to be subject to a liability falling within section 153(2)(c) above when it becomes entitled to the right concerned, unless it ceases to be subject to the liability earlier apart from this subsection.
- (10) A company ceases to be subject to a liability falling within section 153(2)(d) above when it becomes entitled to the share or shares, unless it ceases to be subject to the liability earlier apart from this subsection.
- (11) In a case where—
 - (a) a company would (apart from this subsection) become subject to a liability at a particular time (the later time) by virtue of the preceding provisions of this section,
 - (b) the liability falls within section 153(2)(a) above,
 - (c) the time at which the company, in drawing up its accounts, regards itself as becoming subject to the liability is a time (the earlier time) earlier than the later time, and
 - (d) the accounts are drawn up in accordance with normal accountancy practice, the company shall be taken to have become subject to the liability at the earlier time and not at the later time.
- (12) Where subsection (11) above applies, as regards any time beginning with the earlier time and ending immediately before the later time the nominal amount of the debt shall be taken to be—
 - (a) such amount as the company treats as the nominal amount in its accounts, or
 - (b) such amount as it would so treat in accordance with normal accountancy practice (if that amount is different from the amount found under paragraph (a) above).
- (13) A company owes a liability at a particular time if it is subject to it at that time.

156 Assets and liabilities: other matters

- (1) Each of the following questions shall be determined according to the facts of the case concerned—
 - (a) whether a transaction (or series of transactions) involves the creation of one asset consisting of a right to settlement under a debt or a number of assets consisting of a number of such rights;
 - (b) whether a transaction (or series of transactions) involves the creation of one liability consisting of a duty to settle under a debt or a number of liabilities consisting of a number of such duties;
 - (c) whether a transaction (or series of transactions) involves the creation of both an asset (or assets) held and a liability (or liabilities) owed by the same company.
- (2) Subsection (3) below applies where—
 - (a) a company, in drawing up its accounts, regards itself as becoming entitled or subject to an asset or liability at a particular time,

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- (b) the company, in drawing up its accounts, regards itself as ceasing to be entitled or subject to the asset or liability at a later time,
 - (c) at the time mentioned in paragraph (a) above it could reasonably be expected that the company would become entitled or subject to such an asset or liability,
 - (d) the asset or liability does not in fact come into existence before the later time but (if it did) it would fall within section 153(1)(a) or (2)(a) above, and
 - (e) the accounts are drawn up in accordance with normal accountancy practice.
- (3) The company shall be taken to—
- (a) become entitled or subject to such an asset or liability at the time it regards itself as becoming so entitled or subject, and
 - (b) cease to be entitled or subject to such an asset or liability at the time it regards itself as ceasing to be so entitled or subject.
- (4) Where subsection (3) above applies, as regards any time beginning with the time mentioned in subsection (3)(a) and ending with the time mentioned in subsection (3)(b) the nominal amount of the debt shall be taken to be—
- (a) such amount as the company treats as the nominal amount in its accounts, or
 - (b) such amount as it would so treat in accordance with normal accountancy practice (if that amount is different from the amount found under paragraph (a) above).

157 Definitions connected with currency contracts

- (1) A company becomes entitled to rights and subject to duties under a currency contract when it enters into the contract.
- (2) A company holds a currency contract at a particular time if it is then entitled to rights and subject to duties under the contract; and it is immaterial when the rights and duties fall to be exercised and performed.