



Finance Act 1994

1994 CHAPTER 9

PART IV

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER II

INTEREST RATE AND CURRENCY CONTRACTS

Interest rate and currency contracts and options

149 Interest rate contracts and options

- (1) A contract is an interest rate contract for the purposes of this Chapter if—
 - (a) the condition mentioned below is fulfilled, and
 - (b) the only transfers of money or money's worth for which the contract provides are payments falling within subsection (2), (3) or (4) or section 151 below.
- (2) The condition is that under the contract, whether unconditionally or subject to conditions being fulfilled, a qualifying company becomes entitled to a right to receive, or becomes subject to a duty to make, at a time specified in the contract a variable rate payment.
- (3) An interest rate contract may include provision under which, as the consideration or part of the consideration for a payment falling within subsection (2) above, the qualifying company becomes subject to a duty to make, or (as the case may be) becomes entitled to a right to receive, at a time specified in the contract a fixed or fixed rate payment.
- (4) In so far as the rights and duties mentioned in subsections (2) and (3) above relate to two payments—
 - (a) which fall to be made at the same time, and
 - (b) of which one falls to be made to and the other by the qualifying company,

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it is immaterial for the purposes of this section that those rights and duties may be exercised and discharged by a payment made to or, as the case may require, by the company of an amount equal to the difference between the amounts of those payments.

(5) Each of the following, namely—

- (a) an option to enter into an interest rate contract, and
- (b) an option to enter into such an option,

is an interest rate option for the purposes of this Chapter if the only transfers of money or money's worth for which it provides are payments falling within section 151 below.

(6) In this section—

“fixed payment” means a payment of a fixed amount specified in the contract;

“fixed rate payment” means a payment the amount of which falls to be determined (wholly or mainly) by applying to a notional principal amount specified in the contract, for a period so specified, a rate the value of which at all times is the same as that of a fixed rate of interest so specified;

“variable rate payment” means a payment the amount of which falls to be determined (wholly or mainly) by applying to a notional principal amount specified in the contract, for a period so specified, a rate the value of which at any time is the same as that of a variable rate of interest so specified.

150 Currency contracts and options

(1) A contract is a currency contract for the purposes of this Chapter if—

- (a) the condition mentioned below is fulfilled, and
- (b) the only transfers of money or money's worth for which the contract provides are payments falling within subsection (2), (3), (4) or (9) or section 151 below.

(2) The condition is that under the contract a qualifying company—

- (a) becomes entitled to a right and subject to a duty to receive payment at a specified time of a specified amount of one currency (the first currency), and
- (b) becomes entitled to a right and subject to a duty to pay in exchange and at the same time a specified amount of another currency (the second currency).

(3) A currency contract may include provision under which the qualifying company—

- (a) becomes entitled to a right to receive at a time specified in the contract a payment the amount of which falls to be determined (wholly or mainly) by applying a specified rate of interest to a specified amount of the first currency, and
- (b) becomes subject to a duty to make at a time so specified a payment the amount of which falls to be determined (wholly or mainly) by applying a specified rate of interest to a specified amount of the second currency.

(4) A currency contract may also include provision under which the qualifying company—

- (a) becomes entitled to a right and subject to a duty to receive payment at a specified time of a specified amount of the second currency, and
- (b) becomes entitled to a right and subject to a duty to pay in exchange and at the same time a specified amount of the first currency.

(5) In subsections (3) and (4) above—

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- (a) any reference to a time is a reference to a time earlier than that specified in the contract for the purposes of subsection (2) above, and
 - (b) any reference to a specified rate of interest is a reference to a rate the value of which at any time is the same as that of the specified rate of interest.
- (6) Each of the following, namely—
- (a) an option to enter into a currency contract, and
 - (b) an option to enter into such an option,
- is a currency option for the purposes of this Chapter if the only transfers of money or money's worth for which it provides are payments falling within section 151 below.
- (7) An option the exercise of which at any time would result in a qualifying company—
- (a) becoming entitled to a right and subject to a duty to receive payment at that time of a specified amount of one currency, and
 - (b) becoming entitled to a right and subject to a duty to pay in exchange and at that time a specified amount of another currency,
- is a currency option for the purposes of this Chapter if the only transfers of money or money's worth for which it provides are payments falling within this subsection and section 151 below.
- (8) Where, in the case of a contract which is subject to a condition precedent, the fulfilment of the condition at any time would result in a qualifying company becoming entitled and subject as mentioned in paragraphs (a) and (b) of subsection (7) above, that subsection and the following provisions of this Chapter shall have effect as if—
- (a) the contract before the fulfilment of the condition were such an option as is mentioned in that subsection,
 - (b) the fulfilment of the condition were the exercise of the option, and
 - (c) the contract after the fulfilment of the condition were the contract resulting from the exercise of the option.
- (9) It is immaterial for the purposes of this section that the rights and duties mentioned in subsection (2), (4) or (7) above may be exercised and discharged by a payment made to or, as the case may require, by the qualifying company of an amount (in whatever currency) which, at the specified time or the time when the option is exercised, is equivalent in value to the difference between—
- (a) the local currency equivalent at that time of one of the payments there mentioned, and
 - (b) the local currency equivalent at that time of the other of those payments.
- (10) Subsection (9) above shall be read as applying equally to such of the rights and duties mentioned in subsection (3) above as fall to be exercised and discharged at the same time, and for that purpose shall have effect with such modifications as may be requisite.

151 Provisions which may be included

- (1) An interest rate contract or option, or a currency contract or option, may include provision under which the qualifying company—
- (a) becomes entitled to a right to receive a payment in consideration of its entering into the contract or option, or
 - (b) becomes subject to a duty to make a payment in consideration of another person's entering into the contract or option.

Status: This is the original version (as it was originally enacted).

- (2) An interest rate contract or option, or a currency contract or option, may also include provision for all or any of the following—
- (a) a payment of a reasonable fee for arranging the contract or option;
 - (b) a payment of reasonable costs incurred in respect of the contract or option;
 - (c) a payment for securing, or made in consequence of, the variation or termination of the contract or option; and
 - (d) a payment by way of compensation for, or made in consequence of, a failure to comply with the contract or option.

152 Provisions which may be disregarded

- (1) Where—
- (a) but for the inclusion in a contract or option of provisions for one or more transfers of money or money's worth, the contract or option would be a qualifying contract; and
 - (b) as regards the qualifying company and the relevant time, the present value of the transfer, or the aggregate of the present values of the transfers, is small when compared with the aggregate of the present values of all relevant payments,

the contract or option shall be treated for the purposes of section 149 or, as the case may be, section 150 above as if those provisions were not included in it.

- (2) For the purposes of subsection (1) above—
- (a) any present value of a relevant payment which is a negative value shall be treated as if it were the equivalent positive value; and
 - (b) any relevant payment the amount of which represents the difference between two other amounts shall be treated as if it were a payment of an amount equal to the aggregate of those amounts.

- (3) In this section—

“relevant payments” means—

- (a) in relation to a contract, qualifying payments under the contract;
- (b) in relation to an option, qualifying payments under the option and payments which, if it were exercised, would be qualifying payments under the contract arising by virtue of its exercise;

“the relevant time” means the time when the contract or option was entered into or, if later, the time when the provisions were included in the contract or option.