
STATUTORY INSTRUMENTS

1994 No. 3226

**The Exchange Gains and Losses
(Transitional Provisions) Regulations 1994**

PART III

**PRE—COMMENCEMENT GAINS AND LOSSES: CASE
I ASSETS AND LIABILITIES AND CAPITAL ASSETS**

Interpretation

7.—(1) For the purposes of any computation required to be made for the purposes of regulation 10 or 11 below, an amount which is a gain shall be taken to be a positive figure and an amount which is a loss shall be taken to be a negative figure, but for the purposes of regulations 12 and 13 all amounts shall be taken to be positive.

(2) In this Part—

“attributed gain”, in relation to any asset or liability, means a gain which is attributed to the asset or liability under regulation 8(3) or 9(2) below;

“attributed loss”, in relation to any asset or liability, means a loss which is attributed to the asset or liability under regulation 8(3) or 9(2) below;

“current period” has the meaning given by regulation 10 below;

“the cumulative gain” has the meaning given by regulation 10 below;

“the cumulative loss” has the meaning given by regulation 10 below;

“the cumulative taxed gain” has the meaning given by regulation 11 below;

“the cumulative taxed loss” has the meaning given by regulation 11 below;

and any reference to exempt circumstances shall be construed as if it were contained in paragraph 2 of Schedule 15 to the 1993 Act.

Attributed gains and losses: trade assets and liabilities

8.—(1) Paragraph (3) below applies in relation to an existing asset held by a qualifying company—

(a) if a profit or loss would have accrued to the company if it had disposed of the asset immediately before the company’s commencement day for a consideration equal to the asset’s basic valuation; and

(b) that profit or loss would have been taken into account in computing for the purposes of corporation tax the profits and gains of a trade carried on by the company for the accounting period which includes the day immediately before the company’s commencement day.

(2) Paragraph (3) below applies in relation to an existing liability owed by a qualifying company—

- (a) if a profit or loss would have accrued to the company—
 - (i) in a case falling within section 153(2)(a), if the liability had been satisfied in full by the company immediately before the company's commencement day, or
 - (ii) in a case falling within section 153(2)(c) or (d), if the right to settlement or the share or shares in question (as the case may be) had been acquired by the company immediately before the company's commencement day for a consideration equal to the consideration for the company becoming subject to the liability, and
- (b) that profit or loss (if it had accrued) would have been taken into account in computing for the purposes of corporation tax the profits and gains of a trade carried on by the company for the accounting period ending immediately before the company's commencement day.
- (3) The amount of any such profit or loss as is mentioned in paragraph (1) or (2) above reduced in accordance with paragraph (4) below if applicable, shall be attributed to the asset or liability (as the case may be) and—
 - (a) in the case of a profit shall be attributed as a gain, and
 - (b) in the case of a loss shall be attributed as a loss.
- (4) In any case where unrealised exchange differences which have accrued in respect of the asset or liability are taken into account for the purposes of corporation tax for the accounting period ending immediately before the company's commencement day or any earlier accounting period, the amount of the profit or loss referred to in paragraph (3) above shall be reduced by an amount equal to the amount of those differences.
- (5) Section 159 applies for the purposes of this regulation as modified by regulation 6 above.

Attributed gains and losses: regulation 6(3) assets

9.—(1) This regulation applies in relation to any regulation 6(3) asset held by a qualifying company a disposal of which by that company immediately before its commencement day at the asset's market value at that time would have given rise to a chargeable gain or allowable loss, but does not apply in any case where any such disposal of the asset by the company would fall within section 116(10)(b) of the 1992 Act.

(2) Subject to paragraph (3) below, an amount equal to any chargeable gain or allowable loss (as the case may be) which would have accrued to the company had it disposed of the asset as mentioned in paragraph (1) above shall be attributed to the asset and—

- (a) if a chargeable gain would have accrued, it shall be attributed as a gain, and
- (b) if an allowable loss would have accrued, it shall be attributed as a loss.
- (3) In any case where—
 - (a) the asset was held by a company which at any time before its commencement day was not resident in the United Kingdom, and
 - (b) if the asset had been disposed of at that time and a gain had accrued to the company on that disposal, it would not have been included in the company's chargeable profits by virtue of section 10(3) of the 1992 Act,

then for the purposes of paragraph (1) above the company shall be deemed to have acquired the asset, at market value, on the first day on which any gain which would have accrued to the company if the asset had been disposed of on that day (assuming that the disposal gave rise to a gain and disregarding any allowable losses which might be available for deduction under section 8(1) of, or Schedule 7A to, the 1992 Act⁽¹⁾) would have been included in the company's chargeable profits for

(1) Schedule 7A was inserted by section 88(2) of the Finance Act 1993.

the purposes of corporation tax (whether because the company became resident or the asset became situated in the United Kingdom on that day or for any other reason).

(4) In any case where the company referred to in paragraph (1) above acquired the asset on a no gain/no loss disposal, then the reference in paragraph (3) above to a company includes the company from which it acquired the asset, and if that company also acquired the asset on such a disposal, to the company from which it acquired the asset, and so on for a series of such disposals.

(5) The disposal referred to in paragraph (1) above shall be taken not to be a no gain/ no loss disposal, and for the purposes of this regulation a disposal is a no gain/no loss disposal if, by virtue of any enactment specified in section 35(3)(d)(2) of the 1992 Act, neither a gain nor a loss accrues to the person making the disposal.

(6) In any case where section 176 of the 1992 Act would have applied in relation to the disposal referred to in paragraph (1) above if that disposal had actually taken place, that section shall apply for the calculation of any allowable loss for the purposes of that paragraph.

(7) Any expression used in this regulation which is not defined in Chapter II shall have the same meaning as in the 1992 Act.

The cumulative gain and the cumulative loss

10.—(1) Subject to regulation 15, in the case of any existing asset or liability held or owed by a company as respects which an initial exchange gain or loss accrues to the company for an accrual period (“the current period”), there shall be calculated the aggregate amount of initial exchange gains and losses which have accrued as respects the asset or liability in question for all earlier accrual periods and for the current period, and that aggregate amount—

- (a) if positive, shall be the cumulative gain for that asset or liability for the current period, and
- (b) if negative, shall be the cumulative loss for that asset or liability for the current period,

but in cases where that aggregate amount is zero there shall be either a cumulative gain or a cumulative loss equal to zero for the period, according to whether there was a cumulative gain or a cumulative loss of any amount (including zero) for the accrual period immediately preceding the current period.

(2) For the purposes of paragraph (1) above, the amount of any initial exchange gain or loss shall be determined disregarding the following provisions of this Part and the regulation 2(2) provisions.

The cumulative taxed gain and the cumulative taxed loss

11.—(1) In the case of any asset or liability to which regulation 10 applies, there shall be calculated the aggregate amount of the initial exchange gains and losses which have accrued to the company as respects the asset or liability for accrual periods earlier than the current period, and—

- (a) if that aggregate amount is positive it shall be the cumulative taxed gain for that asset or liability for the current period,
- (b) if it is negative it shall be the cumulative taxed loss for that asset or liability for the current period, and
- (c) if that aggregate amount is zero or, by virtue of regulation 12, there is no aggregate amount, there shall be taken to be a cumulative taxed loss equal to zero for the period.

(2) For the purposes of paragraph (1) above—

(2) Section 35(3)(d) was amended by section 46 of, and paragraph 21(2) of Schedule 9 and paragraph 5(9) of Schedule 17 to, the Finance (No. 2) Act 1992 and by paragraph 2(2) of Schedule 24 to the Finance Act 1994.

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- (a) the question whether any initial exchange gain or loss has accrued for any period other than the current period shall be determined in accordance with this Part but as if the regulation 2(2) provisions had never come into force; and
- (b) there shall be disregarded any gain or loss which accrued for an accrual period other than the current period unless—
 - (i) it has been taken into account in computing the profits or gains of the company holding or owing the asset or liability for the purposes of corporation tax for accounting periods ending before the beginning of the current period, or
 - (ii) it would have been so taken into account if the regulation 2(2) provisions had never come into force; or
 - (iii) it is equal to zero.

Assets and liabilities as respects which there is an attributed gain or loss

12.—(1) Subject to regulation 15, in relation to an asset or liability held or owed by a company as respects which—

- (a) there is an attributed gain, E, or an attributed loss, F, and
- (b) an initial exchange gain or loss (“the actual gain or loss”) accrues to the company for the current period,

Table A or Table B below (as appropriate) shall apply and in any case falling within the first column of that Table, the actual gain or loss shall be deemed not to accrue but, subject to any conditions specified in the second column, the gain or loss specified in relation thereto in the third column shall be deemed to accrue and shall be an initial exchange gain or loss (as the case may be) accruing in the place of the actual gain or loss.

(2) For the purposes of paragraph (1)(b) above, the question whether any initial exchange gain or loss has accrued shall be determined disregarding this Part and the regulation 2(2) provisions.

TABLE A

If there is an attributed gain E

Case for the current period	Condition	Deemed gain or loss
1. Cumulative loss B and no cumulative taxed gain or loss	B is greater than E	Loss equal to B — E
2. Cumulative loss B and a cumulative taxed loss C	(i) B is not greater than E and C is greater than zero	(i) Gain equal to C
	(ii) B is greater than E and C is less than (B — E)	(ii) Loss equal to (B — E) — C
	(iii) B is greater than E and C is greater than (B — E)	(iii) Gain equal to C — (B — E)
3. Cumulative loss B and a cumulative taxed gain D	(i) B is greater than E	(i) Loss equal to (B — E) + D
	(ii) B is not greater than E	(ii) Loss equal to D
4. Cumulative gain A and a cumulative taxed gain D	(i) A is greater than D	(i) Gain equal to A — D
	(ii) D is greater than A	(ii) Loss equal to D — A

Case for the current period	Condition	Deemed gain or loss
5. Cumulative gain A and a cumulative taxed loss C		Gain equal to C +plus; A

TABLE B

If there is an attributed loss F

Case for the current period	Condition	Deemed gain or loss
1. Cumulative gain A and no cumulative taxed gain or loss	A is greater than F	Gain equal to A — F
2. Cumulative gain A and a cumulative taxed gain D	(i) A is not greater than F	(i) Loss equal to D
	(ii) A is greater than F and D is less than (A — F)	(ii) Gain equal to (A — F) — D
	(iii) A is greater than F and D is greater than (A — F)	(iii) Loss equal to D — (A — F)
3. Cumulative gain A and a cumulative taxed loss C	(i) A is greater than F	(i) Gain equal to (A — F) + C
	(ii) A is not greater than F and C is greater than zero	(ii) Gain equal to C
4. Cumulative loss B and a cumulative taxed loss C	(i) B is greater than C	(i) Loss equal to B — C
	(ii) C is greater than B	(ii) Gain equal to C — B
5. Cumulative loss B and a cumulative taxed gain D		Loss equal to B + D

Gains and losses on disposal of assets and liabilities

- 13.—(1) Subject to regulations 14(1) and 15(1), paragraph (2) or (3) below applies where—
- an accrual period ends as respects an existing asset or liability held or owed by a company which is the last accrual period as respects that asset or liability, and
 - there is as respects the asset or liability an attributed gain or loss.
- (2) If there is an attributed gain, E, as respects the asset or liability, then—
- if there is a cumulative gain, A, as respects the asset or liability for the last period, an amount equal to E shall be deemed to be a relevant gain, accruing to the company as respects that asset or liability immediately before the end of the last accrual period;
 - if there is a cumulative loss, B, as respects the asset or liability for the last period, and E exceeds B, an amount equal to the excess shall be deemed to be a relevant gain, accruing to the company as respects that asset or liability immediately before the end of the last accrual period; and
 - if there is neither a cumulative loss nor a cumulative gain as respects the asset or liability for the last period, an amount equal to E shall be deemed to be a relevant gain, accruing to the company as respects that asset or liability immediately before the end of the last accrual period.

- (3) If there is an attributed loss, F, as respects the asset or liability, then—
- (a) if there is a cumulative loss, B, as respects the asset or liability for the last period, an amount equal to F shall be deemed to be a relevant loss, accruing to the company as respects that asset or liability immediately before the end of the last accrual period;
 - (b) if there is a cumulative gain, A, as respects the asset or liability for the last period, and F exceeds A, an amount equal to the excess shall be deemed to be a relevant loss, accruing to the company as respects that asset or liability immediately before the end of the last accrual period; and
 - (c) if there is neither a cumulative loss nor a cumulative gain as respects the asset or liability for the last period, an amount equal to F shall be deemed to be a relevant loss, accruing to the company as respects that asset or liability immediately before the end of the last accrual period.
- (4) In paragraphs (2) and (3) above any reference to a relevant gain or loss is—
- (a) in relation to a regulation 6(3) asset, a chargeable gain or an allowable loss; and
 - (b) in relation to any other asset or any liability, an initial exchange gain or an initial exchange loss;
- and in relation to a regulation 6(3) asset, those paragraphs have effect subject to regulation 14(2) to (11).
- (5) If the asset or liability has in whole or in part been held or owed by the company in exempt circumstances at any time during the last accrual period, then any initial exchange gain or loss which accrues as respects that asset or liability by virtue of paragraph (2) or (3) above shall be treated as not being an exchange gain or loss of a trade or part of a trade for that accrual period, and section 129 shall apply accordingly.
- (6) Subject to paragraph (7) below, if the asset or liability is one as respects which section 127 applies and the debt has been reduced during an accrual period, then—
- (a) the debt shall be treated as if it were two debts (all the terms and conditions of which are the same as those of the actual debt except as to principal) one equal to the amount outstanding at the end of the accrual period and the other equal to the difference between that amount and the amount of the debt at the beginning of the period, and
 - (b) the attributed gain or loss, the cumulative taxed gain or loss and the cumulative gain or loss (if any) which is found as respects the asset or liability for that accrual period shall each be divided proportionately into two parts according to the proportion by which the debt has been reduced, and
 - (c) that part of each of those gains or losses which bears the same proportion to the actual gain or loss as the amount of the debt outstanding at the end of the period bears to the amount of the debt at the beginning of the period shall be taken into account under regulation 12 and the other part shall be taken into account under paragraphs (1) to (5) above.
- (7) Paragraph (6) shall not apply—
- (a) where the amount of the debt increased before the reduction occurred unless the debt was reduced to an amount less than the amount it was before the increase (or if there has been more than one, the first increase) occurred; or
 - (b) as respects the last accrual period for the asset or liability if an initial exchange gain or loss does not accrue (disregarding this Part) as respects the asset or liability for that period.
- (8) Paragraph (6) may apply in relation to an asset or liability for more than one accrual period if the debt is reduced in more than one accrual period.

Further provisions relating to regulation 6(3) assets

14.—(1) Where the asset in question is a regulation 6(3) asset then—

- (a) regulation 13 does not apply if, immediately before the relevant transaction, it was held by the company in exempt circumstances, and
- (b) the following provisions of this regulation shall not apply if section 127 has applied in relation to the asset for any accrual period;

and in this regulation any reference to the relevant transaction is a reference to the transaction by virtue of which the company ceased to be entitled to the asset.

(2) If there was an attributed gain as respects a regulation 6(3) asset and the basic valuation of the asset exceeds its market value at the time of the relevant transaction, then, subject to paragraph (4) below, an amount equal to the amount of the excess shall be set against the amount of the chargeable gain, if any, which (disregarding this paragraph) is deemed to accrue by virtue of regulation 13 and—

- (a) if the two amounts are equal, the chargeable gain shall not be deemed to accrue;
- (b) if the excess is the greater, an allowable loss shall be deemed to accrue to the company at the time of the relevant transaction of an amount equal to the difference between the excess and the amount of that chargeable gain, and that gain shall not be deemed to accrue;
- (c) if the chargeable gain is the greater, it shall be reduced by an amount equal to the amount of the excess.

(3) If there was an attributed loss as respects a regulation 6(3) asset and the market value of the asset at the time of the relevant transaction exceeds the basic valuation of the asset, then, subject to paragraph (4) below, an amount equal to the amount of the excess shall be set against the amount of the allowable loss, if any, which (disregarding this paragraph) is deemed to accrue by virtue of regulation 13 and—

- (a) if the two amounts are equal, the allowable loss shall not be deemed to accrue;
- (b) if the excess is the greater, that loss shall not be deemed to accrue but a chargeable gain shall be deemed to accrue to the company at the time of the disposal of an amount equal to the difference between the excess and the amount of that loss, and
- (c) if the allowable loss is the greater, it shall be reduced by an amount equal to the amount of the excess.

(4) The amount of the excess for the purposes of paragraph (2) or (3) above shall not exceed an amount equal to the aggregate of—

- (a) the cumulative taxed gain or loss, and
- (b) the initial exchange gain or loss (if any) accruing as respects the asset for its last accrual period, and
- (c) any chargeable gain or allowable loss which (disregarding paragraphs (2) and (3)) accrues by virtue of regulation 13;

and for the purposes of paragraph (2) section 176 of the 1992 Act shall apply in relation to that excess as if it were an allowable loss accruing on the relevant transaction (and if apart from this paragraph that section would not apply in relation to that transaction, it shall so apply for this purpose).

(5) In any case where apart from this paragraph an allowable loss would accrue to a company as respects a regulation 6(3) asset by virtue of paragraph (2) above or, if that paragraph does not apply, by virtue of regulation 13 or the amount of the allowable loss is reduced by virtue of paragraph (3) above, then, subject to paragraph (7) below—

- (a) the company may elect, by notice to the inspector within two years of the end of the accounting period in which the disposal in question occurs, that this paragraph shall apply as respects the asset, and

- (b) where such an election is made, an amount equal to the amount of that loss (or that reduced loss) shall be set against the amount of any exchange gains accruing to the company in the accounting period which is or includes the last accrual period or in subsequent accounting periods, and
- (c) if a reduction is made under paragraph (7)(b) below in the amount available under subparagraph (b) above to be set against any gains, the allowable loss or the reduced loss shall be deemed to be equal to the amount of that reduction, and
- (d) if such a reduction is not made, the allowable loss, or reduced loss, shall not be deemed to accrue.

An election under this paragraph shall be irrevocable.

(6) Paragraph (7) below applies in any case where a reorganisation within the meaning of section 127 of the 1992 Act, or any other transaction to which that section applied, took place before the company's commencement day in relation to which—

- (a) the original shares (within the meaning of that section) were or included one or more shares which would not have been qualifying assets had the company been entitled to them on its commencement day or, if the company was still entitled to them on that day, are not qualifying assets; and
- (b) the new holding (within the meaning of that section) was or included an asset—
 - (i) which is a regulation 6(3) asset held by the company (whether or not the company held it in pursuance of the reorganisation or other transaction in question or in pursuance of a subsequent no gain/no loss disposal), or
 - (ii) which would have been a regulation 6(3) asset had the company held it on its commencement day and which has been exchanged for, or converted into, the regulation 6(3) asset which the company held on its commencement day in pursuance of one or more transactions to which section 127 of the 1992 Act applied or one or more no gain/no loss disposals (or both).

In relation to any transaction within section 136 of the 1992 Act, the reference in subparagraph (b) to an exchange shall be construed in accordance with that section.

(7) Where this paragraph applies in relation to a reorganisation within the meaning of section 127 of the 1992 Act, or any other transaction to which that section applied—

- (a) any election under paragraph (5)(a) above must be made in relation to all regulation 6(3) assets derived from shares which—
 - (i) in relation to that reorganisation or transaction are the original shares (within the meaning of that section), and
 - (ii) are held by the company on its commencement day, and
- (b) the amount available to be set against any exchange gains in accordance with paragraph (5)(b) above shall be reduced by an amount equal to the excess (if any) of A over B where—
 - A is the aggregate of the attributable losses referable to those regulation 6(3) assets which have been found under regulation 9, and
 - B is the aggregate of those losses which would have been found under regulation 9 if section 127 of the 1992 Act had not applied in relation to the reorganisation or other transaction,
 and where the excess is greater than the amount available, that amount shall be taken to be zero, and
- (c) where the company ceases to be entitled to all those regulation 6(3) assets in pursuance of more than one transaction—

- (i) the election must be made in relation to the first of those transactions, and
- (ii) shall have effect in relation to subsequent relevant transactions relating to any of those assets (notwithstanding paragraph (5)(a) above), and
- (iii) sub-paragraph (b) above shall apply in relation to each relevant transaction as respects those regulation 6(3) assets which are the subject of that transaction.

(8) Paragraph (6)(b) does not apply if the company acquired the asset in pursuance of a transaction to which section 127 of the 1992 Act did not apply and which is not a no gain/no loss disposal.

(9) For the purposes of this regulation, a transaction is a no gain/no loss disposal if, by virtue of any enactment specified in section 35(3)(d) of the 1992 Act, neither a gain nor a loss accrues to the person transferring the asset in question.

(10) For the purposes of paragraphs (2) to (4) above, the amount of any excess shall be expressed in the nominal currency and shall be translated into sterling using the London closing exchange rate for the day immediately preceding the company's commencement day.

(11) Any expression used in this regulation which is not defined in Chapter II shall be construed as if this regulation were included in the 1992 Act.

Elections to treat pre—commencement day gains and losses as accruing after commencement day over 6 year period

15.—(1) A company may elect by notice to the inspector, before the expiry of the period of 92 days beginning with the company's commencement day or, if later, the expiry of the period of 183 days beginning with 23rd March 1995, that the provisions of this regulation shall apply, subject to paragraph (6) below, in relation to all existing assets and liabilities held or owed by the company, and where an election has effect under this regulation—

- (a) it shall have effect as from the beginning of the company's commencement day, and shall be irrevocable, and
- (b) regulations 10 to 14 shall not apply in relation to any such existing asset or liability.

(2) In any case where an election has effect under this regulation and as respects any existing asset or liability held or owed by the company there is an attributed gain or loss, then for the purposes of Chapter II the amount of that gain or loss shall be divided into 6 equal parts of which—

- (a) each shall be deemed to be an initial exchange gain or loss (as the case may be) accruing as respects that asset or liability, and
- (b) the first shall be deemed to accrue to the company at the beginning of the company's commencement day, and
- (c) subject to paragraph (3) below, the remaining 5 shall be deemed to accrue (severally) to the company at the beginning of each of the following 5 anniversaries of that day.

(3) If the company ceases to be within the charge to corporation tax before the fifth anniversary of its commencement day, any exchange gain or loss which (by virtue of paragraph (2)(c) above) has not accrued before the company ceases to be within the charge to corporation tax, shall be deemed to accrue to the company immediately before it so ceases.

(4) Any initial exchange gain or loss which is deemed to accrue to the company by virtue of this regulation shall be deemed to accrue for an accrual period which is identical to the accounting period of the company which includes the day on which the gain or loss is treated as accruing.

(5) This regulation and sections 128 and 129 shall continue to apply in relation to an asset or liability as respects which the gain or loss is deemed to accrue by virtue of this regulation notwithstanding a disposal of the asset or liability by the company before the fifth anniversary of the company's commencement day, and for the purposes of those sections the asset or liability shall be

deemed to continue to be held or owed until that anniversary by the company for the same purposes as those for which it was held or owed immediately before the disposal.

(6) An election under this regulation shall not apply in relation to a regulation 6(3) asset or an asset which is held by the company on its commencement day in exempt circumstances.

Set off of certain pre—commencement losses against exchange gains

16.—(1) A company may elect by notice to the inspector, before the expiry of the period of 92 days beginning with the company’s commencement day or, if later, the expiry of the period of 183 days beginning with 23rd March 1995, that available losses shall be available to be set against the company’s exchange gains in accordance with paragraphs (9) to (11) below, and an election under this paragraph—

- (a) may be made in relation to the whole of the available losses or such amount, less than the whole of the available losses, as may be specified in the election; and
- (b) shall be irrevocable.

(2) Subject to paragraphs (4) to (8) below, in this regulation “available losses”, in relation to any company, means allowable losses which—

- (a) accrued to the company before its commencement day at a time when it was within the charge to corporation tax, and
- (b) accrued either—
 - (i) on the disposal of assets which if they had not been disposed of before the company’s commencement day would have been qualifying assets, or
 - (ii) by virtue of section 143 of the 1992 Act⁽³⁾ in respect of a currency contract, a currency option, an interest rate contract or an interest rate option, (and this provision shall be construed as one with Chapter II of Part IV of the Finance Act 1994⁽⁴⁾),
 other than losses which are attributable to assets which would not have been qualifying assets if they had been held by the company on its commencement day.

(3) For the purposes of paragraph (2) above, a loss is attributable to an asset (“the first asset”) if and to the extent that—

- (a) it accrued on the disposal of another asset by the company (“the second asset”), and
- (b) the first asset was the subject of a reorganisation or other transaction to which section 127 of the 1992 Act applied, and
- (c) either—
 - (i) the second asset was held by the company in pursuance of that reorganisation or other transaction, or
 - (ii) the second asset was held by the company in pursuance of a transaction which is the last in a series of transactions, the first of which is the transaction referred to in sub-paragraph (b) above, and of all of which are either transactions to which section 127 of the 1992 Act applied or no gain/ no loss disposals (within the meaning of regulation 14(9)) so that the loss has been calculated by reference to the acquisition or other costs of the first asset.

References in this paragraph to a reorganisation or other transaction to which section 127 of the 1992 Act applied include a reference to any reorganisation or other transaction to which that section would have applied but for section 116 of that Act.

⁽³⁾ Section 143 was amended by section 95 of the Finance Act 1994.

⁽⁴⁾ 1994 c. 9.

- (4) A loss which has accrued to a company on the disposal of an asset is not an available loss if—
- (a) had a gain instead accrued on that disposal, the company would not have been chargeable to corporation tax in respect of that gain; or
 - (b) it has been deducted, or is deductible, under section 8(1) of, or Schedule 7A to, the 1992 Act from any chargeable gains which have accrued to the company in accounting periods ending before the company's commencement day.
- (5) Paragraph (6) below applies in any case where—
- (a) an allowable loss has accrued to a company on the disposal of an asset, and
 - (b) the asset was held by the company at any time when it was not resident in the United Kingdom, and
 - (c) if the asset had been disposed of at that time and a gain had accrued to the company on that disposal, it would not have been included in the company's chargeable profits by virtue of section 10(3) of the 1992 Act.
- (6) Where this paragraph applies—
- (a) there shall be computed the amount of the allowable loss (if any) which would have accrued to the company on the disposal if it had acquired the asset, at market value, on the first day on which any gain which would have accrued to the company if the asset had been disposed of on that day (assuming that the disposal gave rise to a gain and disregarding any allowable losses which might be available for deduction under section 8(1) of or Schedule 7A to the 1992 Act) would have been included in the company's chargeable profits for the purposes of corporation tax (whether because the company became resident or the asset became situated in the United Kingdom on that day or for any other reason); and
 - (b) if there is neither a loss nor a gain or there is a gain on that computation, there shall be taken to be a loss of zero;

and the available losses shall be reduced by an amount equal to the excess of the amount of the allowable loss referred to in paragraph (5)(a) above over the amount of the loss found under paragraph (a) or (b) above.

(7) In any case where the company acquired the asset on a no gain/no loss disposal, then references in paragraphs (5)(b) and (c) and (6)(a) above to a company include the company from which it acquired the asset, and if that company also acquired the asset on such a disposal, to the company from which it acquired the asset, and so on for a series of such disposals.

For the purposes of this paragraph an asset is acquired on a no gain/no loss disposal if, by virtue of any enactment specified in section 35(3)(d) of the 1992 Act, neither a gain nor a loss accrues to the person making the disposal.

(8) Where losses have accrued to a company for accounting periods ending before the company's commencement day (but after the last accounting period, if any, as respects which the company did not have a surplus of allowable losses available to be carried forward to the next accounting period under section 8(1)(b) of or Schedule 7A to the 1992 Act) in respect of assets falling within paragraph (2)(b) above and also in respect of other assets, the losses accruing in respect of those other assets shall not be available losses, and for the purposes of determining in such a case which losses are available and which are not—

- (a) losses which have accrued as respects assets falling within paragraph (2)(b) above shall be taken to have been set off first against gains accruing on such assets, and
- (b) losses which have accrued as respects other assets shall be taken to have been set off first against gains accruing on such other assets.

(9) Losses as respects which an election made by a company has effect under this regulation shall be set against any exchange gain which accrues to the company—

- (a) in an accounting period beginning on or after the company's commencement day, and
- (b) either—
 - (i) in respect of a regulation 6(3) asset or an asset which would be a regulation 6(3) asset if it were an existing asset held by the company; or
 - (ii) in respect of a currency contract which before the company's commencement day (assuming the contract to have been in existence then) would have fallen within section 143 of the 1992 Act;

and losses shall be set against gains accruing in earlier accounting periods rather than later periods.

(10) Where a loss is to be set against a gain under this regulation the amount of the loss shall be deducted from the gain before the application of section 128(4) or 129(2) (whichever is applicable).

(11) Any reference in paragraphs (1), (9) and (10) above to an exchange gain in relation to a company is a reference to a gain which has accrued (or been deemed to accrue) to the company for an accrual period as respects any asset, liability or contract after regulations 12 and 13 and the regulation 2(2) provisions have applied (if they are applicable) as respects the asset, liability or contract for that accrual period; but computations under regulations 12 and 13 shall be made disregarding any set—off under this regulation.

(12) Where allowable losses have accrued on disposals occurring at different times, and the election is made in relation to an amount rather than to the whole of the allowable losses, the losses constituting that amount shall be taken for all purposes to be those losses accruing on earlier disposals rather than those accruing on later disposals, and any allowable losses which constitute an amount specified in an election under this regulation shall not be available for deduction under section 8(1) of, or Schedule 7A to, the 1992 Act.

(13) In this regulation—

- (a) any reference to a company's commencement day in relation to any company which, by virtue of regulation 3, has more than one commencement day, is a reference to the first such day; and
- (b) any expression which is not defined in Chapter II shall have the same meaning as in the 1992 Act.