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STATUTORY INSTRUMENTS

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**1994 No. 3228**

**INCOME TAX**

**The Exchange Gains and Losses (Deferral  
of Gains and Losses) Regulations 1994**

<i>Made</i>	- - - -	<i>15th December 1994</i>
<i>Laid before the House of Commons</i>	- - - -	<i>16th December 1994</i>
<i>Coming into force</i>	- -	<i>23rd March 1995</i>

The Treasury, in exercise of the powers conferred on them by sections 143(7), 164(14) and 167(1) of the Finance Act 1993<sup>(1)</sup>, hereby make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Exchange Gains and Losses (Deferral of Gains and Losses) Regulations 1994.

(2) These Regulations shall come into force on 23rd March 1995.

(3) In these Regulations, “the 1993 Act” means the Finance Act 1993 and any reference to a particular section, without more, is a reference to that section of that Act.

**Settlement and replacement of debts**

2.—(1) This regulation applies where—

- (a) a debt held or owed by a company (“the original debt”) under which a long-term capital asset or liability (“the original asset or liability”) subsists is settled and replaced to any extent by another debt (“the replacement debt”) under which another such asset or liability (“the replacement asset or liability”) subsists, and
- (b) (apart from this regulation) an exchange gain or loss accrues to the company for an accrual period (“the settlement period”) as respects the original asset or liability which (where the debt is not wholly settled) is attributable to that part of the debt by which its nominal amount is decreased;

and in these Regulations “the replacement debt date” is the date on which that company becomes entitled or subject to the replacement debt.

(2) Subject to paragraph (6) below, in any case where this regulation applies—

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(1) 1993 c. 34.

- (a) if the settlement period is the last accrual period as respects the original asset or liability, subject to paragraph (3) below, any exchange gain or loss which accrued for that period as respects that asset or liability shall be deemed to be unrealised, and any such exchange gain shall be deemed not to accrue as respects that asset or liability for that period;
- (b) if the settlement period is not the last accrual period as respects the original asset or liability, subject to paragraph (3) below, any exchange gain which accrued for that period as respects that asset or liability shall be deemed not to accrue as respects that asset or liability for that period;
- (c) an amount equal to the amount of any exchange gain falling within sub-paragraph (a) or (b) above shall be deemed to be an exchange gain accruing as respects there placement asset or liability for its first accrual period and section 143(2) shall not apply in relation to any gain deemed to accrue by this sub-paragraph;

and sections 139 to 143 (apart from section 143(7)) shall have effect accordingly.

(3) Paragraph (2) does not apply—

- (a) in relation to any debt unless it falls within paragraph (10) or (11) below;
- (b) in relation to any debt unless the replacement debt date falls in the period beginning 30 days before the date on which the original debt or part of the original debt was settled and ending 30 days after that date;
- (c) in relation to any debt as the replacement debt as respects another debt if or to the extent that, for the purposes of this regulation and sections 139 to 143, it replaces a third debt.

(4) Where this regulation applies and the amount by which the original debt is settled exceeds the amount of the replacement debt, then the exchange gain referred to in paragraph (1)(b) above shall be apportioned according to the proportion which that excess bears to the amount by which that debt is replaced, and paragraph (2) shall not apply to so much of the exchange gain as corresponds to the excess.

(5) In any case where paragraph (2) above applies and the replacement debt date falls in one accounting period and the settlement of the whole or part of the original debt occurred in a later accounting period, then the reference in paragraph (2)(c) above to the first accrual period for the replacement debt shall be construed as a reference to the accrual period for that debt which falls within that later accounting period.

(6) In any case where paragraph (2) above would (but for this paragraph) apply and the settlement of the original debt occurred in one accounting period and the replacement debt date falls in a later accounting period, then that paragraph shall not apply but—

- (a) if the settlement period is the last accrual period for the asset or liability in question, the exchange gain or loss shall be deemed to be unrealised, and
- (b) for the purposes of making a claim under section 139 as respects the original debt (or so much of it as is replaced) and the earlier accounting period—
  - (i) the first accrual period for the replacement debt shall be taken to be the second accrual period for the original debt, and
  - (ii) section 143(2) shall not apply; and
- (c) references in section 140(4) to (9) to the asset or liability shall be construed as references to the replacement asset or liability;

and sections 139 to 143 (apart from section 143(7)) shall have effect accordingly.

(7) For the purposes of paragraph (3)(c) above—

- (a) if the whole or part of the original debt is settled but there is more than one new debt held or owed by the company which may be taken to be the replacement debt, then the first of those new debts to which the company became entitled or subject shall be taken

to replace the original debt and any later debt may only be taken to replace the original debt if and to the extent that the amount replaced of the original debt exceeds the amount of the earlier debt, and

- (b) if there is more than one debt which another debt could be taken to replace, that other debt shall be taken to replace the debt which was settled first and shall only be taken to replace the debt settled later if and to the extent that its amount exceeds the amount of the debt settled earlier.

(8) The company may notify the inspector that it wishes one debt to be taken to replace another debt otherwise than in accordance with paragraph (7) above (but subject to paragraph (3)), and if the inspector is (or on appeal the Commissioners are) satisfied that the first mentioned debt in fact replaced the other debt, paragraph (7) shall not apply and that debt shall be taken to replace the other debt in accordance with the notice.

(9) Where paragraph (6), (7) or (8) above applies all such apportionments of gains shall be made for the purposes of this regulation and sections 139 to 143 as may be just and reasonable.

(10) A debt falls within this paragraph if—

- (a) the maximum amount of the principal is specified at the commencement of the term of the debt and the principal cannot be increased beyond that maximum amount (except as mentioned in sub-paragraph (c) below), and
- (b) any part of the principal once repaid cannot be redrawn, and
- (c) any interest which, if not paid when due, is to be capitalised or rolled-up, is to be added to the principal on the due date and repayable on the same terms as the principal.

In determining whether a debt falls within this paragraph there shall be disregarded any term in so far as it provides for the principal or any interest to be calculated by reference to any withholding or other tax (including foreign tax).

(11) A debt falls within this paragraph if—

- (a) it is a debt on a deep gain security for the purposes of paragraph 1 of Schedule 11 to the Finance Act 1989<sup>(2)</sup> and the amount payable on redemption is payable on one specified date, or
- (b) it is a debt on a qualifying indexed security for the purposes of that paragraph, or
- (c) it is a debt on a deep discount security for the purposes of paragraph 1 of Schedule 4 to the Income and Corporation Taxes Act 1988<sup>(3)</sup>;

and for the purposes of this regulation the amount of any such debt on the replacement debt date shall be taken to be equal to its basic valuation.

### **Disregard of certain profits in section 141(3) computation**

**3.—**(1) This regulation applies in any case where a company's profits for an accounting period which are to be taken into account under section 141(3) of the 1993 Act include any income or chargeable gains which are relevant income or gains for the purposes of section 797 of the Income and Corporation Taxes Act 1988 ("the relevant income or gains").

(2) Where this regulation applies then, for the purposes of section 141(3), the company's profits for the accounting period shall be reduced by an amount equal to the excess of

**X over Y**

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(2) 1989 c. 26. Paragraph 1 of Schedule 11 was amended by paragraph 19(6) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12) and by paragraph 2 of Schedule 7 to the Finance (No.2) Act 1992 (c. 48).

(3) 1988 c. 1. Paragraph 1 of Schedule 4 was amended by paragraph 2 of Schedule 10 to the Finance Act 1989, by section 59 of, and paragraph 26 of Schedule 10 to, the Finance Act 1990 (c. 29) and by paragraph 14(57) of Schedule 10 to the Taxation of Chargeable Gains Act 1992.

where

X is the amount of the relevant income and gains, and

Y is the amount (if any) found under paragraph (4) below.

(3) There shall be found the amount which would be the amount of corporation tax attributable to the relevant income or gains under section 797 if Chapter IV of Part X of the 1988 Act had not been enacted, and the excess of that amount over the amount of the credit for foreign tax allowable against the corporation tax in fact attributable to the relevant income or gain determined in accordance with section 797(2) and (3) shall be the net corporation tax attributable to the relevant income or gain.

(4) There shall be found the gross amount (if any) of income and gains on which an amount of corporation tax equal to that net corporation tax would be charged if the income and gains were chargeable to tax as income and gains of the company for that accounting period at the rate payable by the company (before any credit under Part XVIII of the 1988 Act).

### **Groups of companies**

4.—(1) For the purposes of this regulation companies are members of a group if by virtue of section 170 of the Taxation of Chargeable Gains Tax Act 1992(4) they are members of a group for the purposes of sections 171 to 181 of that Act.

(2) This regulation applies to a claim made under section 139 of the 1993 Act as regards an accounting period of the claimant company for the whole or part of which it is a member of a group, and in relation to such a claim subsection (5) of that section shall have effect with the addition at the end of paragraph (c) of the words—

“and if the claim is made by a member of a group (within the meaning of section 141 below) is must contain a statement of that fact.”.

(3) In relation to a claim to which this regulation applies, section 141 shall have effect subject to the following modifications.

(4) The following subsections shall be substituted for subsection (1)—

“(1) Subject to subsection (1A) below, where a company (“the claimant company”) makes a claim under section 139 above (“the current claim”) as regards an accounting period of the claimant company for the whole or part of which it is a member of a group (“the relevant accounting period”)—

- (a) an amount is available for relief under that section for that accounting period which is equal to the amount (if any) by which amount A is exceeded by the appropriate proportion of the group B amount, or of the group C amount, if it is lower than the group B amount, and
- (b) the appropriate proportion is that proportion which amount B3 (as found for the claimant company) bears to amount  $\Sigma B3$ .

(1A) In any case where there is no group B amount or no group C amount, no amount shall be available for relief under section 139.

(1B) For the purposes of this section a company is a member of a group if by virtue of section 170 of the Taxation of Chargeable Gains Tax Act 1992 it is a member of the group for the purposes of sections 171 to 181 of that Act, and references below to a “group company” and “group”, in relation to the claimant company, are references to companies belonging to the same group as that company and to that group.”.

(5) After subsection (3) there shall be inserted—

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(4) 1992 c. 12. Section 170 was amended by paragraph 5 of Schedule 6 to the Finance (No.2) Act 1992.

“(3A) In any case where an amount equal to the appropriate proportion found under subsection (1) above for the claimant company is equal to at least half of the amount of that company’s profits (within the meaning of subsection (3) above disregarding this subsection), subsection (3) shall have effect as if for the reference to the company’s profits there were substituted a reference to the aggregate profits of those group companies to which subsection (3B) below applies for the relevant accounting period.

(3B) This subsection applies as respects a group company for an accounting period if at any time during that period—

- (a) that group company owes the claimant company qualifying debts the amount outstanding under which is equal to at least one-tenth of the total value outstanding of all the qualifying debts owed by that group company; or
- (b) the claimant company owes that group company qualifying debts the amount outstanding under which is equal to at least one-tenth of the total value outstanding of all the qualifying debts owed by the claimant company;

and for the purposes of this subsection “qualifying debts” do not include debts due for goods or services supplied to or by the company in the course of its trade.”.

(6) The following subsections shall be substituted for subsections (4) and (5)—

“(4) There shall be found for each group company during the relevant accounting period amounts B1 and B2 where—

- (a) B1 is the total amount of—
  - (i) unrealised exchange gains which accrue or would (apart from a claim under section 139 above) accrue to the company in an accrual period constituting or falling within the relevant accounting period as regards long-term capital assets or long-term capital liabilities or both,
  - (ii) less any such exchange gain in so far as it is attributable to that part of the debt by which its nominal amount is decreased, and
- (b) B2 is the total amount of—
  - (i) unrealised exchange losses which accrue to the company in an accrual period constituting or falling within the relevant accounting period as regards long-term capital assets or long-term capital liabilities or both,
  - (ii) less any such exchange loss in so far as it is attributable to that part of the debt by which its nominal amount is decreased,

and the excess of B1 over B2 (if any) is called B3, and the excess of B2 over B1 (if any) is called B4.

(4A) There shall be found the aggregate of the B3 amounts for the group, called  $\Sigma B3$ , and the aggregate of the B4 amounts for the group, called  $\Sigma B4$ , and the excess of  $\Sigma B3$  over  $\Sigma B4$  (if any) is called the group B amount.

(4B) There shall be found for each group company during the relevant accounting period amounts C1 and C2 where—

- (a) C1 is the total amount of the exchange gains which accrue or would apart from a claim under section 139 above) accrue to the company in an accrual period constituting or falling within the relevant accounting period as regards relevant items, and
- (b) C2 is the total amount of the exchange losses which accrue to the company in an accrual period constituting or falling within the relevant accounting period as regards relevant items,

and the excess of C1 over C2 (if any) is called C3, and the excess of C2 over C1 (if any) is called C4.

This subsection is subject to subsection (5) below.

(4C) There shall be found the aggregate of the C3 amounts for the group, called  $\Sigma C3$ , and the aggregate of the C4 amounts for the group, called  $\Sigma C4$ , and the excess of  $\Sigma C3$  over  $\Sigma C4$  (if any) is called the group C amount.

(4D) In any case where an accrual period for a company falls partly within and partly outside the relevant accounting period, any exchange gains or losses which accrue or would (apart from a claim under section 139) accrue to the company in that accrual period shall be apportioned according to the respective lengths of that part of the accrual period which falls within the relevant accounting period and the remainder of the accrual period, and the proportion of the exchange gains and losses corresponding to the remainder of that period shall be disregarded for the purposes of this section.

(4E) In any case where a company (including the claimant company) ceases to be or becomes a group company during the relevant accounting period—

- (a) references in subsections (1), (3), (3A), (3B), (4) and (4B) above to that accounting period shall as respects that company be construed as references to that part of that period during which the company was a group company, and
- (b) the company's profits for that period shall be apportioned according to the respective lengths of that part of the relevant accounting period during which the company was a group company and of the remainder of the accounting period, and
- (c) the proportion of the profits corresponding to that remainder shall be disregarded for the purposes of this section;

but if it appears that such an apportionment would produce an unreasonable or unjust result, such other method of apportionment shall be used as appears just and reasonable.

(4F) In any case where the accounting period of a group company other than the claimant company does not coincide with the relevant accounting period—

- (a) references in subsections (1), (3), (3A), (3B), (4) and (4B) above to that accounting period shall as respects that group company be construed as references to so much of its accounting period or periods which fall within the relevant accounting period, and
- (b) that group company's profits for that period or periods shall be apportioned according to the respective lengths of that part of its accounting period which coincides with the relevant accounting period and the remainder of the accounting period, and
- (c) the proportion of the profits corresponding to the remainder of that period or periods shall be disregarded for the purposes of this section.

(4G) In any case where subsection (3) or (3A) above has effect subject to regulation 3 of the Exchange Gains and Losses (Deferral of Gains and Losses) Regulations 1994, subsections (4E) and (4F) above shall each have effect with the addition of a reference to that regulation in paragraph (a).

(5) For the purposes of subsection (4B) above, in computing the amounts C1 and C2 for any group company which is not the claimant company, there shall be disregarded any exchange gain or loss which has accrued (disregarding section 139 above) as regards an asset, liability or contract if, by virtue of subsection (11) of section 128 above, any gain or loss falling within subsection (12) of that section and accruing to the company as respects that asset, liability or contract would not be taken into account in calculating for the purposes

of corporation tax the profits or losses of any period of a trade carried on by the company during the relevant accounting period.”

(7) In subsection (6) for “subsections (4) and (5) above” there shall be substituted “this section”.

(8) In subsection (7) for “subsection (5) above” there shall be substituted “this section”.

15th December 1994

*Derek Conway*  
*Andrew Mitchell*  
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.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which come into force on 23rd March 1995, supplement the provisions in sections 139 to 143 of the Finance Act 1993 which allow companies to defer, from one accrual period to the next, recognition of certain unrealised exchange gains on long-term capital borrowings and advances.

Regulation 1 provides for citation, commencement and interpretation.

Regulation 2 provides that where a long-term capital debt is repaid and replaced, within 30 days before or after the repayment, by another similar debt, exchange gains or losses on the original debt are to be treated as unrealised and — in so far as they are eligible for deferral — exchange gains may be deferred and treated as accruing on the replacement debt.

Regulation 3 excludes overseas income or chargeable gains — to the extent that corporation tax thereon is covered by foreign tax — from the company's profits as found under section 141(3) of the Finance Act 1993 for the purposes of computing the amount available for relief under section 141(1) of that Act.

Regulation 4 modifies the rules for calculating the amount available for relief under section 141 where the claimant is a member of a UK group of companies.