
STATUTORY INSTRUMENTS

1994 No. 3228

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

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⁽¹⁾ 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) it 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—

“(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

(1) 1992 c. 12. Section 170 was amended by paragraph 5 of Schedule 6 to the Finance (No.2) Act 1992.

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”.

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