



The Law Society

Foreign Currency Assets and Chargeable Gains

Response of the Law Society of England and Wales

February 2013



Foreign Currency Assets and Chargeable Gains

Comments of Tax Law Committee of the Law Society of England & Wales

Introduction

1. The Law Society is the representative body for over 145,000 solicitors in England and Wales. It negotiates on behalf of the profession, and lobbies regulators, Government and others. This response has been prepared on behalf of the Society by members of its Tax Law Committee, which is made up of senior and specialist lawyers practising in this field.
2. The Law Society welcomes this opportunity to comment on the draft legislation published on 11 December 2012 implementing the proposals in the consultation paper published on 20 July 2012 on “Foreign Currency Assets and Chargeable Gains”, on which the Law Society prepared a response in October 2012.

General

3. The Law Society generally welcomes the draft legislation. For the reasons given in our October paper, we are disappointed that the scope of the legislation was not widened beyond shares to cover ships and aircraft. Otherwise, the legislation adopts a sensible approach to the choice of currency for the computation of gains and losses.
4. We note that the legislation will automatically apply to all disposals after Royal Assent. We welcome the fact that it will therefore apply to existing assets where, currently, FX gains are preventing normal commercial actions being taken, for example, to wind up group companies. However, this must create circumstances in which groups that have not realised a sterling gain on assets may now be prevented from realising them without triggering a gain in their functional currency. For this reason we had proposed an elective regime for existing assets in our October paper.

Specific comments on the legislation

5. Subsection 9C(3): the drafting here seems unnecessarily complicated in the case of companies that are not members of a group. For a solus company, the effect of section 9C(3)(c) seems to be that the company's relevant currency is its functional currency whether or not it also has a designated currency. This is achieved by section 9C(2), and section 9C(3) could be confined to cases of companies that are members of a group.
6. Subsection 9C(10): we were not sure that this section was aimed at the correct issue. It is drafted so that it fixes the time at which the company incurs allowable expenditure in the case of a no gain/no loss or a market value transaction – that time being the time at which the relevant transfer occurs. However, there is no reason to suppose that the time of the acquisition would be any other time. The relevant no gain/no loss or market value provisions operate to fix the amount of the consideration, and do not affect the time at which the acquisition takes place. The focus of this provision should presumably be on converting, if necessary, the currency in which the acquisition cost is incurred into the company's relevant currency at the spot rate on the date of the acquisition. Arguably, this provision is not necessary at all given the terms of

subsection 9C(6), but it is probably useful to retain it with the necessary amendments for clarity.

7. Subsection 9C(11): the definition of “interest in shares” does not seem to be used in the remainder of the section, and could be omitted.

Questions

If you have any questions in relation to this response please contact the chair of the corporation tax sub-committee, Lydia Challen, on lydia.challen@allenoverly.com or 020 3088 2753.