

TAXREP 27/99

FOREIGN EXCHANGE GAINS AND LOSSES

*Text of a letter sent to the Inland Revenue by the Tax Faculty
of the Institute of Chartered Accountants in England
and Wales in October 1999*

FOREIGN EXCHANGE GAINS AND LOSSES

1 I refer to your letter dated 13 July outlining a proposal to extend local currency elections and requesting comments on the points raised.

Extension of election

2 We welcome the proposal to extend the local currency election rules to include activities other than trades.

Possible limitation

3 We do not see any compelling reason why the election should be limited in any way. We therefore think that the election should be available to all taxpayers, and should be available in all currencies, subject to the existing requirement that the currency used should be the economic currency of the business.

'Compulsory' election

4 The local currency election was introduced as an option for taxpayers, and we see no reason why it should be compulsory. We do not agree that local currency treatment should be mandatory where the conditions are met. We would, however, be happy to consider this suggestion further if (and when) tax treatment and accounting treatment are aligned, since then and only then would mandatory local currency treatment actually avoid the need for a separate computation of taxable profits.

Anti-avoidance

5 We do not see why any anti-avoidance rules are required along the lines of those set out in paragraph 13, Schedule 9 FA 1996. In view of the unpredictability of exchange movements and the irrevocable nature of the election we do not see what scope exists for avoidance, whether or not the election is extended to non-traders. If the Revenue considers that such rules are necessary, we would be grateful for an explanation as to the circumstances envisaged where avoidance might arise.

Other Points

6 We also believe that this is an opportunity to rectify an anomaly relating to new branches of existing UK trades. In these cases, an election cannot apply until the start of the accounting period after that in which the branch is set up, even if the election is made within 92 days of the branch being set up. This position contrasts with the position under Regulation 9(3), Local Currency Elections Regulations 1994 (SI 1994/3230) where an existing branch first comes within the charge to UK tax. If an election is made within that time limit, it should be capable of being backdated to the start of the branch operation.

7 If you have any questions, please let us know.

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