
DRAFT STATUTORY INSTRUMENTS

2009 No.

CORPORATION TAX

The Corporation Tax (Exclusion from Short-Term Loan Relationships) Regulations 2009

Made - - - - *****
Coming into force - - *1st January 2010*

The Treasury makes the following Regulations in exercise of the powers conferred by paragraph 62(4) of Schedule 15 to the Finance Act 2009(a).

In accordance with paragraph 62(6) of Schedule 15 to that Act, a draft of this instrument was laid before the House of Commons and approved by a resolution of that House.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Corporation Tax (Exclusion from Short-Term Loan Relationships) Regulations 2009.

(2) These Regulations shall come into force on 1st January 2010.

(3) In these Regulations “FA 2009” means the Finance Act 2009.

Exclusion from short-term loan relationship

2. For the purposes of paragraph 60 of Schedule 15 to FA 2009 (intra-group short-term finance: financing expense), a finance arrangement is not to be taken as a short-term loan relationship for the relevant period or any parts of the relevant period where—

- (a) any part or all of the finance arrangement is made for a long-term funding purpose; or
- (b) the finance arrangement is a long-term aggregated loan relationship.

Meaning of long-term funding purpose

3.—(1) A finance arrangement is made for a long-term funding purpose where at the date the finance arrangement is made—

- (a) to the extent that the finance arrangement provides for the creation of money debt, it is reasonable to expect that all the money debt created under it will not be settled within 12 months of the money debt first being created under it, and

- (b) to the extent that the finance arrangement is otherwise a loan relationship, it is reasonable to expect that it will not terminate within 12 months of its coming into force; or
- (c) the conditions in regulation 4 are met.

(2) For the purposes of this regulation circumstances where it is reasonable to expect that the finance arrangement will not be settled or terminated within 12 months include circumstances where—

- (a) the finance arrangement may be settled or terminated by use of borrowing; or
- (b) the finance arrangement may be settled or terminated temporarily by funds available for a limited period of time.

Anti-avoidance

4.—(1) A sequence of finance arrangements is considered to be a single finance arrangement made for a long-term funding purpose if the following conditions are met.

(2) The first condition is that the sequence of finance arrangements when taken together will not be settled or terminated within 12 months.

(3) The second condition is that the sequence of finance arrangements is part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to characterise a loan relationship as a short-term loan relationship for the purposes of paragraph 60 of Schedule 15 to FA 2009.

Long-term aggregated loan relationship

5.—(1) A number of finance arrangements are long-term aggregated loan relationships if the following conditions are met.

(2) The first condition is that the finance arrangements exist between the same two companies.

(3) The second condition is that there are no repayment terms relating specifically to each separate finance arrangement.

(4) The third condition is that accounts show the finance arrangements as a single net balance between the companies at all times.

(5) The fourth condition is that the finance arrangements when taken together do not meet the conditions mentioned in paragraph 62(1) of Schedule 15 to FA 2009.

names

names

Date

Two of the Lords Commissioners to Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations should be read with Schedule 15 to the Finance Act 2009 (FA 2009) (in particular paragraph 62 of that Schedule). Paragraph 62 of Schedule 15 to FA 2009 provides for certain finance arrangements to be treated as short-term loan relationships for the purposes of Schedule 15 to FA 2009. A finance arrangement is considered to be a short-term loan relationship if it meets one of the conditions provided by sub-paragraphs (2) to (3) of paragraph 62. The broad effect of these is to include loan relationships that are either required from the outset to last for less than twelve months, or where there is no fixed term, are considered to no longer exist within 12 months. A loan relationship with no fixed term can only be treated as a short-term loan relationship once it has been repaid and its character as short-term determined. These Regulations apply to exclude a loan relationship which is expected to last for more than 12 months.

Regulation 1 provides for citation, commencement and interpretation.

Regulation 2 provides that a finance arrangement is not to be taken as a short-term loan relationship where any part of the finance arrangement is made for a long-term funding purpose or the finance arrangement is a long-term aggregated loan relationship.

Regulation 3 provides the meaning of long-term funding purpose. A finance arrangement is made for a long-term funding purpose if at the date the arrangement is made it is reasonable to expect that it will not be settled or terminated within 12 months or the conditions in regulation 4 are met. Regulation 3(2) provides that circumstances where it would be reasonable to expect that the finance arrangement will not be settled or terminated within 12 months include circumstances where the finance arrangement may be settled or terminated by use of borrowing or where it may be settled or terminated temporarily with funds available for a limited period of time.

Regulation 4 provides an anti-avoidance rule so that a sequence of finance arrangements that are otherwise short-term finance arrangements are considered to be a single finance arrangement for a long-term purpose where certain conditions are met. The conditions are that a sequence of finance arrangements when taken together will not be settled or terminated within 12 months and the sequence of finance arrangements are part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to characterise a loan relationship as a short-term loan relationship for the purposes of paragraph 60 of Schedule 15 to FA 2009.

Regulation 5 provides that a number of finance arrangements are long-term aggregated loan relationships where certain conditions are met. Those conditions are that the loan relationships exist between the same two companies, there are no repayment terms relating specifically to each separate loan relationship, the accounts show the finance arrangements as a single net balance between the companies at all times and the conditions mentioned in paragraph 62(1) of Schedule 15 to FA 2009 are not met.

A full and final impact assessment of the effect the legislative package of which these Regulations are part will have on the costs of business and the voluntary sector is available at <http://www.hmrc.gov.uk> and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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Draft Regulations laid before the House of Commons under paragraph 62(6) of Schedule 15 to the Finance Act 2009, for approval by resolution of the House of Commons.

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