

**2004 No. 3259**

**INCOME TAX**

**The Exchange Gains and Losses (Bringing into Account Gains or Losses) (Amendment) Regulations 2004**

*Made* - - - - *9th December 2004*

*Laid before the House of Commons* *10th December 2004*

*Coming into force* - - *1st January 2005*

The Treasury, in exercise of the powers conferred upon them by section 84A(8) to (10) of the Finance Act 1996(a) and paragraph 26(5) of Schedule 23, and paragraph 16(8) to (10) of Schedule 26, to the Finance Act 2002(b), make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Exchange Gains and Losses (Bringing into Account Gains or Losses) (Amendment) Regulations 2004 and shall come into force on 1st January 2005.

**Amendments to the Exchange Gains and Losses (Bringing into Account Gains or Losses) Regulations 2002**

2.—(1) The Exchange Gains and Losses (Bringing into Account Gains and Losses) Regulations 2002(c) are amended as follows.

(2) These amendments have effect in relation to accounting periods beginning on or after 1st January 2005.

3. In regulation 2(1) (interpretation)—

(a) for the definition of “foreign business asset” substitute—

““foreign business asset” means, in relation to a company, an asset of an operation of the company which for accounting purposes is a foreign operation consisting of a branch;”;

(b) after the definition of “section 84A” insert—

““statement of recognised gains and losses and statement of changes in equity” mean the statements mentioned in subsection (3) of section 84A or sub-paragraph (3) of paragraph 16(d);”;

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(a) 1996 c. 8. Section 84A was inserted by paragraph 3 of Part 1 of Schedule 23 to the Finance Act 2002 (c. 23) and subsections (8) to (10) were amended by paragraph 2(4) and (5) of Part 1 of Schedule 10 to the Finance Act 2004 (c. 12) (“the 2004 Act”).

(b) Paragraph 16(8) to (10) of Schedule 26 was amended by paragraph 48(4) and (5) of Part 2 of Schedule 10 to the 2004 Act.

(c) S.I. 2002/1970.

(d) Subsection (3) was substituted by subsequent subsections (3) and (3A) by paragraph 2(2) of Part 1 of Schedule 10 to the 2004 Act and sub-paragraph (3) was substituted by subsequent sub-paragraphs (3) and (3A) by paragraph 48(2) of Part 2 of Schedule 10 to the 2004 Act.

(c) after the definition of “the 1994 Regulations” insert—

““the Disregard Regulations” means the Loan Relationships and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004(a).”.

**4.—**(1) Amend regulation 3 as follows.

(2) In paragraph (1)—

(a) for “either” substitute “any”, and

(b) after “paragraphs” insert “(1A),”.

(3) After paragraph (1) insert—

“(1A) The circumstances prescribed by this paragraph are that—

(a) there is a disposal of an asset by a company in an accounting period beginning on or after 1st January 2005; and

(b) in relation to a liability representing a loan relationship or a derivative contract of the company, an exchange gain or loss arose to the company which—

(i) was recognised in the company’s statement of recognised gains and losses or statement of changes in equity and was set off by or against an amount which represents the whole or part of an exchange gain or loss arising in relation to the asset, or

(ii) was prescribed by regulation 3 or 4 of the Disregard Regulations.”.

(4) In paragraph (2)(a) after “1st October 2002” insert “but before 1st January 2005”.

**5.—**(1) Amend regulation 6 as follows.

(2) In paragraph (1) after “applies” insert “to an accounting period beginning on or after 1st January 2005”.

(3) In paragraph (1)(a) omit the words from “other” to “disposal”.

(4) Omit paragraphs (3) and (4).

**6.—**(1) Amend regulation 7 as follows.

(2) In both paragraphs (5) and (6) after “1st October 2002” insert “but before 1st January 2005”.

(3) After paragraph (5) insert—

“(5A) In respect of any time falling within an accounting period beginning on or after 1st January 2005—

(a) a liability is fully matched with an asset if—

(i) an amount representing the whole of an exchange gain or loss arising in relation to the liability is recognised in the company’s statement of recognised gains and losses or statement of changes in equity, and

(ii) the whole of an exchange gain or loss arising in relation to the asset is also so recognised, or

(iii) it is matched with that asset in accordance with regulation 3 or 4 of the Disregard Regulations; and

(b) a liability is partly matched with an asset if—

(i) an amount representing part of an exchange gain or loss arising in relation to the liability is recognised in the company’s statement of recognised gains and losses or statement of changes in equity, and

(ii) part of an exchange gain or loss arising in relation to the asset is also so recognised, or

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(a) S.I. 2004/3256

- (iii) an amount representing part of an exchange gain or loss arising in relation to the liability is matched with that asset in accordance with regulation 3 or 4 of the Disregard Regulations.”.

(4) In paragraph (7), in Rule 1 omit “(other than ones which fall within section 93 of the Finance Act 1996(a))”.

(5) For paragraph (8) substitute—

“(8) For the purposes of paragraph (6), the currency in which a liability is expressed is to be treated as the currency in which an asset is denominated if—

- (a) borrowing in that currency, or
- (b) the entering into a derivative contract whose underlying subject matter is that currency,

could reasonably be expected to eliminate or substantially reduce the economic risk of holding the asset which is attributable to fluctuations in exchange rates.”.

7. In regulation 9(2) for “regulation 3(2)” substitute “regulation 3(1A) and (2)”.

8. In regulation 11(2) for “regulation 3(2)” substitute “regulation 3(1A) and (2)”.

9.—(1) Amend regulation 13 as follows.

(2) For the heading to the regulation, substitute “**Cases where matched assets represent loan relationships**”.

(3) In paragraph (1) for “paragraph (2)” substitute “paragraphs (2) and (2A)”.

(4) After sub-paragraph (2) insert—

“(2A) The circumstances prescribed by this paragraph are where there is a disposal of an asset in an accounting period beginning on or after 1st January 2005 representing a loan relationship in relation to which exchange gains or losses were recognised in the company’s statement of recognised gains and losses or statement of changes in equity.”.

(5) In paragraph (4) for “subsection (4) of section 84A” substitute “paragraphs (2) and (2A)”.

10. After regulation 13 insert—

“**Cases where there are no matching assets**

14.—(1) This paragraph applies where—

- (a) a company has a derivative contract to which sub-paragraph (3) of paragraph 16 applies; and
- (b) regulation 7 and 10 of the Disregard Regulations would apply to the contract but for the condition in paragraph (2)(b) of regulation 7.

(2) Where paragraph (1) applies, the amount of any net gain or loss shall be brought into account for the same period as it would be brought into account if regulation 10 of the Disregard Regulations applied to the contract.”.

*Derek Twigg*  
*Nick Ainger*

9th December 2004

Two of the Lords Commissioners of Her Majesty’s Treasury

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(a) 1996 c. 8. Repealed by paragraph 11 of Part 1 of Schedule 10 to the 2004 Act.

## EXPLANATORY NOTE

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

These Regulations amend the Exchange Gains and Losses (Bringing into Account Gains or Losses) Regulations 2002 (S.I. 2002/1970) : (“the principal Regulations”).

Section 84A of the Finance Act 1996 (c. 8) and paragraph 16 of Schedule 26 to the Finance Act 2002 (c. 23) allow certain exchange gains and losses to be kept out of account for tax purposes when they are recognised in a company’s accounts provided they are subsequently brought into account. The principal Regulations provided how and when such amounts would be brought into account.

The Finance Act 2004 (c. 12) made changes to the loan relationships and foreign currency accounting rules. The effect of these amendments is to reflect the matching rules for foreign currency liabilities made by the Finance Act 2004.

Regulation 1 provides for the citation and commencement of these Regulations.

Regulation 2 introduces the amendments which have effect in relation to accounting periods beginning on or after 1st January 2005.

Regulations 3 to 10 contain the amendments.

These Regulations do not impose any new costs on business.

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