

2005 No. 3383

CORPORATION TAX

The Loan Relationships and Derivative Contracts (Change of Accounting Practice) (Amendment) Regulations 2005

<i>Made</i> - - - -	<i>7th December 2005</i>
<i>Laid before House of Commons</i>	<i>8th December 2005</i>
<i>Coming into force</i> - -	<i>29th December 2005</i>

The Treasury, in exercise of the powers conferred upon them by section 85B(3) and (5) of, and paragraph 19B of Schedule 9 to, the Finance Act 1996(a), paragraph 17C of Schedule 26 to the Finance Act 2002(b) and paragraph 52 of Schedule 4 to the Finance Act 2005(c), make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Loan Relationships and Derivative Contracts (Change of Accounting Practice) (Amendment) Regulations 2005 and shall come into force on 29th December 2005.

(2) These Regulations have effect in relation to periods of account beginning on or after 1st January 2005.

Amendment to the Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004

2. Amend the Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004(d) as follows.

3. In regulation 2 (interpretation) after the definition of “amortised cost basis of accounting” insert—

““earlier period” and “later period” have the meanings given in paragraph 19A of Schedule 9 to the Finance Act 1996(e);”.

4. In regulation 3 (credits and debits not brought into account)—

- (a) after “but” insert “, subject to regulation 3C,”; and
- (b) for “in the first accounting period of the company beginning on or after 1st January 2006” substitute “in accordance with regulations 3A and 3B”.

(a) 1996 c. 8. Section 85B(3) and (5) was inserted by paragraph 3 of Schedule 10 to the Finance Act 2004 (c. 12) and paragraph 19B was inserted by paragraph 36 of that Schedule.
(b) 2002 c.23 Paragraph 17C was inserted by section 52 of, and paragraph 50 of Schedule 10 to, the Finance Act 2004.
(c) 2005 c. 7.
(d) S.I. 2004/3271, amended by S.I. 2004/3347.
(e) Paragraph 19A was inserted by paragraph 36 of Schedule 10 to the Finance Act 2004 and amended by sections 80 and 104 of, and paragraph 31 of Schedule 4 and Part 2(7) of Schedule 11 to the Finance Act 2005.

5. After regulation 3 insert—

“Prescribed debits and credits brought into account over prescribed period

3A.—(1) Subject to regulation 3B, debits and credits prescribed in regulation 4 (“the applicable amounts”) shall be brought into account in accordance with this regulation.

(2) One tenth of the applicable amounts shall be brought into account for each year in the period of ten years (“the prescribed period”) beginning with the later of—

- (a) the first accounting period of the company beginning on or after 1st January 2006, and
- (b) the later period.

(3) If amounts representing fractions of the applicable amounts fall to be brought into account under paragraph (2), those amounts shall be—

- (a) apportioned between the accounting periods beginning or ending in that year, and
- (b) brought into account in the periods to which they are allocated in accordance with that apportionment.

(4) An apportionment between accounting periods of amounts to be brought into account under paragraph (2) for any year shall be made according to how much of the year is included in each period, and, if that year and the accounting period are the same, the apportionment shall be effected by the allocation of the whole of the amounts to that accounting period.

(5) If a company ceases to be within the charge to corporation tax before the end of the prescribed period, the whole of the applicable amounts, so far as they have not fallen to be brought into account for an earlier accounting period, shall be brought into account as a credit or debit for the accounting period ending when the company ceases to be within that charge.

This paragraph does not apply if paragraph (6) applies.

(6) In a case where there is a qualifying transfer—

- (a) these Regulations apply to the successor or transferee for the remainder of the prescribed period for the purpose of bringing into account the applicable amounts, so far as they have not fallen to be brought into account for an earlier accounting period, and
- (b) if—
 - (i) there are two or more successors or transferees, or
 - (ii) the transfer is of part only of the business,

those applicable amounts shall be apportioned between the parties in a manner that is just and reasonable in the circumstances.

(7) Paragraph (6) does not apply where the successor or transferee is resident outside the United Kingdom unless the business to which the qualifying transfer relates is carried on by the successor or transferee through a permanent establishment in the United Kingdom.

(8) In this regulation—

“qualifying transfer” means—

- (a) a transaction to which section 343(1) of the Income and Corporation Taxes Act 1988^(a) (company reconstruction without a change of ownership) applies,
- (b) a transaction to which that section would apply if for “trade” there were substituted “investment business or property business”, or

(a) 1988 c. 1.

- (c) a transfer of a business which consists of the effecting or carrying out of contracts of long-term insurance from one person (“the transferee”) to another person (“the transferor”) (“an insurance business transfer scheme”);
- “successor” has the meaning given in section 343(1) of the Income and Corporation Taxes Act 1988;
- “transferee” and “transferor” have the meanings given in sub-paragraph (c).

Prescribed debits and credits in relation to dormant accounts brought into account in the first accounting period beginning on or after 1st January 2007

3B.—(1) The debits and credits prescribed in regulation 4(1)(a) or (b) which are specified in paragraph (2) shall be brought into account in the first accounting period of the company beginning on or after 1st January 2007.

(2) The specified debits and credits are those which represent the carrying value of a liability owed by a bank or building society to a depositor which at the end of the earlier period had no carrying value.

(3) In this regulation—

- “bank” has the meaning given by section 840A of the Income and Corporation Taxes Act 1988(a);
- “building society” has the meaning given by section 832(1) of that Act;
- “carrying value” has the meaning given by paragraph 19A(4A) of Schedule 9 to the Finance Act 1996(b).

Prescribed debits and credits not brought into account

3C.—(1) The debits and credits prescribed in regulation 4(1) which are specified in paragraph (2) shall not be brought into account in determining a company’s profit or loss for any period.

(2) The specified debits and credits are—

- (a) debits and credits in relation to a derivative contract to which a company is treated as a party by section 94A(2)(b) of the Finance Act 1996 where section 92A of that Act(c) (convertible securities etc: debtor relationships) applied to the debtor relationship in relation to that contract at the end of the company’s period of account immediately preceding the first period of account to begin on or after 1st January 2005;
- (b) debits and credits in relation to a derivative contract to which paragraph 45L of Schedule 26 to the Finance Act 2002(d) (derivatives not embedded in a loan relationship) applies;
- (c) debits and credits in relation to a derivative contract which is an interest rate contract to which regulation 9 of the Disregard Regulations applies;
- (d) debits and credits in relation to a loan relationship specified in paragraph (3) representing the difference between the value of the loan relationship recognised for accounting purposes at the end of the earlier period and the value recognised at the beginning of the later period, where in accordance with generally accepted accounting practice—
 - (i) in the earlier period the loan relationship was brought into account at a contract rate, and

(a) Section 840A was inserted by paragraph 1(1) of Schedule 77 to the Finance Act 1996 and amended by articles 2(1) and (2), 13 and 46 of S.I. 2001/3629.

(b) Paragraph 19A(4A) was inserted by section 80 of, and paragraph 31 of Schedule 4 to, the Finance Act 2005.

(c) Section 92A was inserted by section 74 of the Finance Act 2002 and repealed by section 52 and 326 of, and paragraph 10 of Schedule 10 and Part 2(6) of Schedule 42 to, the Finance Act 2004.

(d) Paragraph 45L was inserted S.I. 2004/3270.

(ii) in the later period the loan relationship is brought into account at a spot rate of exchange,

to the extent that the debit or credit is attributable to the different rates of exchange; and

(e) debits and credits in relation to an interest rate contract which is designated as a cash flow hedge of an interest rate risk in respect of which an election has been made under regulation 6(5) of the Disregard Regulations, to the extent that—

(i) they arise as a result of changes in interest rates, and

(ii) regulation 9A(2)(a) of the Disregard Regulations applies or will apply to them.

(3) A loan relationship is specified if—

(a) it is denominated in a currency which is not the company's functional currency,

(b) a hedging relationship exists between the loan relationship and a derivative contract, and

(c) as a result of that hedging relationship, the derivative contract is within regulation 9 of the Disregard Regulations.

(4) In this regulation—

“contract rate” means the rate of exchange implied by the derivative contract in paragraph 3(b);

“designated”, “cash flow hedge” and “income statement” have the same meaning as for accounting purposes;

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

“functional currency” has the meaning given in section 92E(3) of the Finance Act 1993(b);

“hedging relationship” has the meaning given in regulation 2(5) of the Disregard Regulations.”.

6.—(1) Amend regulation 4 (prescribed debits and credits) as follows.

(2) In paragraph (1) for “the first” substitute “any”.

(3) In paragraph (2) for “any of paragraphs (3), (4), (6) and (7)” substitute “paragraph (3) and (4)”.

(4) In paragraph (3)—

(a) omit the word “ends”; and

(b) omit the last sentence.

(5) For paragraph (4) substitute—

“(4) The debits and credits falling within this paragraph are debits and credits in relation to a derivative contract to which a company is a party where—

(a) the company is treated as party to the contract by section 94A(2)(b) of the Finance Act 1996 and the corresponding loan relationship to which the company is treated as a party by paragraph (b) of that section is one to which paragraph (3) applies; or

(b) the Disregard Regulations do not apply to that contract and there is a hedging relationship between the derivative contract and a hedged item which is a relevant asset or relevant liability.”.

(6) Omit paragraphs (6) and (7).

(a) S.I. 2004/3256, as amended by 2005/2012.

(b) 1993 c. 43. Section 92E was substituted by section 52 of, and paragraph 77 of Schedule 10 to, the Finance Act 2004.

7. In paragraph (5)(d) of regulation 5 (amounts recognised in determining a company's profit or loss in relation to held-to-maturity assets) for "greater" substitute "less".

Vernon Coaker

Dave Watts

7th December 2005

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Loan Relationships and Derivative Contracts (Change of Accounting Practice) Regulations 2004 (S.I. 2004/3271, as amended by S.I. 2004/3347; the “Principal Regulations”) which made provision for certain debits and credits not to be brought into account in the first accounting period beginning on or after 1st January 2005 but to be brought into account in the first accounting period beginning on or after 1st January 2006.

Regulation 1 provides for citation, commencement and effect. Authority for the limited retrospective effect of these Regulations is given by paragraph 52 of Schedule 4 to the Finance Act 2005 (c. 7).

Regulation 2 introduces the amendments to the Principal Regulations.

Regulation 3 amends regulation 2 (interpretation) of the Principal Regulations

Regulation 4 amends regulation 3 (credits and debits not brought into account) of the Principal Regulations consequent on the new regulations introduced by regulation 5.

Regulation 5 inserts new regulations 3A, 3B and 3C into the Principal Regulations. New regulation 3A introduces a provision to bring into account over a ten year period specified debits and credits not brought into account in the first accounting period beginning on or after 1st January 2005. New regulation 3B introduces a provision in relation to debits and credits in respect of dormant accounts of banks and building societies which are to be brought into account in the first accounting period beginning on or after 1st January 2007. New regulation 3C makes provision for specified debits and credits in relation to certain derivative contracts not to be brought into account for any period.

Regulation 6 amends regulation 4 (prescribed credits and debits) of the Principal Regulations.

Regulation 7 amends regulation 5 (amounts recognised in determining a company’s profit or loss in relation to held-to-maturity assets) of the Principal Regulations.

These Regulations impose no new costs on business.

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